

THE RIGHT OF  
PROTESTANT DISSENTERS

TO A  
COMPLEAT TOLERATION

ASSERTED;

Containing an Historical Account of the TEST LAWS,  
And shewing the Injustice, Inexpediency, and Folly of the  
SACRAMENTAL TEST, as now imposed, with respect  
to Protestant Dissenters;

WITH AN  
ANSWER to the OBJECTION  
FROM THE ACT OF UNION WITH SCOTLAND.

*O magna vis veritatis! quæ contra hominum ingenia, calliditatem, sollertiam contraque fictas omnium insidias, facile se, per se, ipsa defendit.*

CICERO pro COELIO.

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By a L A Y M A N.

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THE SECOND EDITION, CORRECTED.

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# P R E F A C E

TO THE

## S E C O N D E D I T I O N.

THE author ventures to intrude again upon the public, not at the instigation of his own feelings, but at the pressing request of others. The *first* edition of this work was written and published (chiefly from materials collected long before) in little more than six weeks: It of course abounded with errors. Many of those errors are corrected in the present edition, and the general arrangement is in some respects altered. Accuracy and brevity can alone be expected, where every ornament of style has been sacrificed in order to reduce the work into a small compass. The author however has endeavoured, in plain and simple language, to give an accurate narrative of facts, and a perspicuous view of the arguments urged by the Protestant Dissenters in favour of a repeal of the Test Laws.

Some persons may think the historical part is too long, and the argumentative part too short. But the author has contented himself with stating, in a general manner, the *principles* on which the Protestant Dissenters found their claim to a *complete* Toleration; first, because it may be presumed that every Protestant Dissenter is acquainted with those principles; and next, because they were so fully discussed and elucidated at the time of the application of the Dissenting Ministers for relief, that little is left to succeeding writers. The author begs leave to refer, for whatever he may have left deficient, to an excellent publication by the Reverend Mr. Fownes or Shrewsbury, intitled, *An Enquiry into the Principles of Toleration*.—On the other hand, the history of the Test Laws has *never* before been fairly given. The Parliamentary Journals are a rich mine of materials hitherto unexplored; and with their assistance, the author has been enabled to correct numberless mistakes of our best historians.—It has been a generally received opinion, that the only permanent clause in the Corporation Act, viz. that by which the Sacramental Test is imposed, was made with an

express view to exclude Protestant Dissenters from corporate offices. It is not denied that the temporary provisions were virtually meant for that purpose; but, in confirmation of the proofs, now deduced from the Parliamentary Journals and the history of Occasional Conformity, that the opinion in question is unfounded, the author has not been able to meet with a single expression in any cotemporary historian to support the contrary supposition; and has been informed that Prynne, who was a Presbyterian, in his *Sundry reasons\* humbly tendered* to the House of Peers against the Corporation Act, makes no complaint against this clause. Those who know the character of Prynne, will consider his silence as a decisive proof, that it was not then a grievance to his sect.

The right or necessity of establishing any particular form of religion is not agitated, though alluded to, in this publication. The author has assumed, with the members of the church of England, with Bishop Warburton and Archdeacon Paley, that an establishment is necessary, and that it is the duty of the civil magistrate to prefer the religion of the majority. In other words, the claim of the church of England to be the established religion of this country is, for the sake of argument, fully admitted; and, in perfect consistency with that claim, the right of Protestant Dissenters to a complete Toleration is supported.

The Catholics, it is hoped, will have no reasonable ground to be offended with the present publication. Several passages in the first edition, at which offence was taken, are now omitted. The author understands that the Catholics intend to make application to Parliament for further privileges than they now enjoy; and he heartily wishes them success. The claim of such as do not acknowledge any powers in the Pope, which are inconsistent with their civil duties as citizens, or with their allegiance to the state, rests upon the footing of *right*, exactly as that of the Protestant Dissenters; and *if there are any who do acknowledge these powers*, their numbers are so few, the present danger of their doctrine so trifling, and the advantages to be derived from conciliating the parties so great, that, upon the ground of expediency, it would be politic and wise to grant their request.—The author, however, regrets the necessity of saying a few words here in vindication of himself and others. He pleads guilty to the charge, of being ignorant of the opinions of modern Catholics; but that ignorance cannot be imputed as a crime. By law the circulation of their books is prohibited, and, till very lately, the sources of infor-

\* The title was, "Sundry reasons humbly tendered to the most honourable House of Peers, by some citizens and members of London, and other cities, boroughs, and corporations, and ports against the new intended bill for governing and reforming corporations." The author has not been able to procure it for perusal.

## SECOND EDITION.

mation respecting them were totally closed against Protestants. The doctrines of the Catholics of England may have been therefore misrepresented, and the picture drawn by prejudice may have been distorted. But the difficulty here referred to still remains, and Protestants are yet at a loss how to gain the necessary intelligence. Liberal men must wish every sect to be rescued from unjust reproaches, but to remove the ancient prejudices of a nation is an arduous task. It requires not only great talents, but more candour and temper than has hitherto appeared.

The author has delivered his sentiments with freedom, but he hopes without illiberality, or unnecessary harshness. However respectable the sanction under which he now appears before the public, he begs it may be understood, that he has not asked the concurrence of any man, or body of men, to what he has written, but that *he alone* is answerable for the errors and imperfections of the ensuing pages.

The Postscript to the first edition of the following work is now omitted, and the Arguments of Bishop Sherlock left to the Refutation of Bishop Hoadley, who, in the opinion of good judges, had the best of the argument.

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# ERRATA.

Page 2, line 14, for *could have read then had.*

20	Ib.	24,	1676	1678.
	7,	11,	<i>AE</i>	<i>Bill.</i>
	Ib.	36,	<i>from</i>	<i>against.</i>
	24,	last	<i>Ibid.</i>	<i>Lords Journ.</i>
67	36,	32,	<i>a</i>	<i>the</i>
	58,	33,	<i>themselves</i>	<i>their religion.</i>
	59,	42,	<i>claims</i>	<i>claim.</i>

# THE RIGHT OF PROTESTANT DISSENTERS

## TO A COMPLEAT TOLERATION

ASSERTED.

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### PART the FIRST.

#### INTRODUCTION.

*Origin of the Sacramental Test—and General History of  
Occasional Conformity.*

**T**HE Sacramental Test is used only in England. It was originally devised against papists, but from a gradual revolution in the principles of protestant dissenters, many of them becoming unable conscientiously to take it, it operated at last against them also.

The Sacrament of the Lord's Supper had been made a test of the principles of the communicant here, prior to the year 1571, which was long before any protestants had openly separated from the establishment\*. It appears from a canon† made in 1603, that many Roman catholics wholly absented themselves from the established church; and that there were others "addicted to the Roman catholic religion," who did not scruple to be present at church, but, "refused" "to become partakers of the sacrament." At that time all

\* In a debate in that year, on the bill to enforce recusants to come to church, a member of the House of Commons proposed that they should be required also to take the sacrament there; and observed that nine of the Privy Council had made a decree in the Star Chamber, that the *gentlemen of the Temple* should receive the communion. The House ordered the clause to be inserted in the bill; which probably did not pass, since it is not in the Statute Book. See Dewes's Journal, p. 177. Till some time in the reign of George the Second, all students of the law were obliged to receive the sacrament, according to the rites of the church of England, before they were admitted to the bar. The Society of Lincoln's Inn, first discontinued the practice. The Inner Temple, and Middle Temple, have since followed the example; but, to the disgrace of Gray's Inn, it is still required there.

† The 114th.

the penal laws were directed against such only as wholly absented themselves from church; and it was not a crime in those who attended divine service to refuse to receive the sacrament. But two years afterwards, when the nation was in a ferment, from the discovery of the popish plot; the statute of the 3d of James I. chapter 4th, enacted, that all popish recusants convicted, who should conform, should, besides repairing to church, receive the sacrament of the Lord's Supper once in every year. This is the first *law*, by which any person was bound to receive the sacrament. Till then, papists and protestants had been equally forced to attend the service of the church; but from that period they were discriminated; for the legislature presumed, that as protestants could have no objection to join in the communion, none but persons *addicted to popery* could refuse to do it.

This is perfectly clear from the practice of the House of Commons. The first instance of their making an order for all the members to take the sacrament, was on the 9th of April, 1614\*: and it was repeated at the beginning of, I believe, each succeeding parliament†, down to the Restoration. Similar orders were made at the beginning of the parliament called in 1661, and by the same House of Commons (which was not dissolved till 1678-9) repeated in 1666. But in 1676, a new test was devised by the legislature for excluding papists, which does not exclude protestant dissenters, though since that time these orders have been disused.

\* Com. Journ. Vol. I. p. 457.

† On the 9th of November, 1640‡, the House of Commons appointed a fast, and enjoined all the members to receive the sacrament, on the next Lord's Day after the fast, at St. Margaret's church; and a select committee was appointed, "to take some course to prevent profanation and rejection of the sacrament, and for the securing of this house, that no papist sit here among us," &c. This committee reported||, that they "took into consideration, that none should sit in this House, after the communion day, but those that had first received the sacrament; and this was intended for the discovery of papists among us." In the debate upon the Toleration Act §, Mr. Love (who was a dissenter, alluding to the last-mentioned order) said, "I had the honour to sit here in the long parliament, and it was then the wisdom of the House, to see whether we were all protestants, by ordering all to receive the sacrament. I could not, and disobeyed the order, and they named me for one that did not; but there were many pieces of bread thrown under the table not received. Said a gentleman, I am afraid he has some popish principles, he has been long beyond sea. Sir Thomas Clifford fell upon me then."

‡ Com. Journ. Vol. II. p. 24.

|| Ibid. p. 32.

§ Grey's Deb. Vol. VIII. p. 217.



The Sacramental Test, thus solely destined against popish offenders, could not materially affect protestant dissenters, so long as, fettered by the prejudices of the times in which they lived, they thought it sinful to separate from the church. Occasional conformity always existed between the different reformed churches, and in England it was coeval with non-conformity itself. The old puritans were dreadfully afraid of falling into the crime of schism, and in 1587 \* one of the rules they imposed upon themselves was, that they should endeavour to wipe off the imputation of schism, inasmuch as *the brethren communicate with the church in the word and sacraments*, and in all other things, except their corruptions. † Convinced that the established church was the true church, and separation from it a sin, they viewed with horror the spirited conduct of the Brownists, who withdrew themselves entirely from it. Out of that sect arose the independents, most of whom made no scruple at first to join with the church in her doctrines and sacraments, though they disliked her ceremonies and discipline. The non-conformists in general continued to communicate, at least occasionally, until the year 1645, when the presbyterian form of worship was established. Under that church-government the independents endeavoured to obtain permission to have separate congregations of their own. This was objected to, because it implied a total separation from the established rule: to which the independents answered, that they agreed in the most essential points, and *would communicate occasionally with the presbyterian church*, and receive their members to communion in return; but this not satisfying the people then in power, the plan for a separation, authorized by law, did not take place. It does not appear, however, that occasional conformity was not in general use among the independents, as well as the episcopalians, while the presbyterian church continued to be the established religion of the country. After the Restoration, and even after the act of uniformity, most of the presbyterians, and many of the other sects, communicated occasionally with the episcopal establishment †.

Occasional

\* Neale's history of the Puritans, Vol. I. p. 329.

† This strongly appears from the Journals of the House of Commons. On the 13th May, 1661 ‡, just after Charles II. had declared to parliament his intention to marry a Princess of Portugal, it was ordered, that every member should receive the sacrament; and a committee was appointed to certify the names of those who attended. Upon this occasion (although it is allowed that fifty-six at least of the presbyterian party had obtained seats) only twenty-two members were returned as defaulters ||; of whom, after deducting those who from absence or sickness

‡ Journ. of the Commons, Vol. VIII. p. 247.

|| lb. 289, 3d July, 1661.

Occasional conformity was so prevalent about this time, that in 1663, (the year after the presbyterians were turned out by the act of uniformity) Mr. Baxter proposed, at a meeting of their ministers, that they should consider how far it was *lawful or their duty to communicate with the parish churches in the liturgy and sacraments*; and used many arguments to prove that it was lawful, *which were not opposed by any of his brethren*\*. At another meeting, held in 1666, soon after the fire of London and the plague had desolated the metropolis, it was agreed that *communion with the church of England was in itself lawful and good*, where it would not do more harm than good.

Bishop Stillingfleet dates the entire separation of the dissenters from the church from the time of the King's declaration of indulgence, issued in the year 1671-2; in consequence of which they built some meeting-houses, and continued ever afterwards to keep up separate congregations. Several publications appeared in defence of these separate meetings; and it is probable, that the discussion of that subject had a considerable effect in checking occasional conformity in dissenters of all denominations. The practice continued, however, to a considerable extent among the presbyterians, as Bishop Stillingfleet tells us, in the preface to his book upon separation, published in 1681; but he adds, that "when they were earnestly pressed by those in authority, to join in communion, they refused it, and have been more and more backward ever since, till now." Occasional conformity has been upon the decline since the Bishop wrote, but there has been no period of time in which it has not been practised.

If, from the general prevalence of this practice after the Restoration, the Sacramental Test *could not* possibly operate against protestant dissenters, it may fairly be inferred, that the legislature had some other object in view when they imposed

sickness could not take it on the day appointed, with those who had taken it after that day, and Sir Ralph Ashton, who had "the tacit dispensation" of the House, Mr. Love only was left without excuse; and for his omission was suspended from his seat till he should communicate. Whether he ever complied with this order does not appear, but he had afterwards a month's further time given †, and continued to be a member till that parliament was dissolved. So that out of a full House of Commons, in which were at least fifty-six known Presbyterians, only *one*, or at most *two*, had any scruple to communicate; and this, as we shall see presently, was in the very year in which the Corporation Act passed.

\* Stillingfleet on Separation, p. 158.

† Journ. of the Commons, Vol. VIII. p. 444, 5th March, 1661.

it. And when we recollect that it had long before made part of the penal laws against papists, we cannot entertain a doubt that its application, in this instance, was intended to be an addition of severity to those laws, under which the papists had long and grievously suffered.

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## C H A P. I.

### *History of the Corporation Act.*

**W**HEN Charles the Second assumed the government, the people consisted principally of three religious sects, the Presbyterians, Independents, and Baptists; but the whole power of the kingdom was in the hands of the Presbyterians: the Parliament was composed of their friends, and their form of church-discipline was established.

To conciliate the affections of a people divided by religious distinctions, Charles the Second published the famous Declaration from Breda, copies of which he sent to the speakers of both Houses of Parliament before he himself came over. In that Declaration he thus expressed himself: "*We do declare a liberty to tender consciences, and that no man shall be disquieted or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom; and that we shall be ready to consent to such an Act of Parliament as upon mature deliberation shall be offered unto us for the full granting that indulgence.*" Trusting to this assurance, the Presbyterians, notwithstanding a strong opposition from the other sects, entered heartily into his views, and compassed his restoration.—Happy had it been for this faithless tyrant, and for his more unfortunate brother, if he had never broken this solemn engagement! But dark and intricate are the ways of Providence! The sufferings of the Dissenters, in breach of the royal promise, occasioned ultimately the expulsion of the family of their persecutor from the throne, and the settling of our present happy form of government.

By means of the Restoration, the church of England was tacitly re-established; But for some time afterwards the Presbyterian clergy were allowed to retain their livings; the King by proclamation stated his intention to have the liturgy revised, to which a strict conformity was not exacted; and of the numerous vacant bishopricks, several were not filled up. Attempts were made without success (in which the Presbyterians had good reason to complain of ill usage) to fix upon some discipline



discipline and form of worship that should include them and the friends of episcopacy in one national church. In 1661, while the terms of this comprehension, projected in pursuance of the King's declaration, were negotiating, the Corporation Act passed. By that Act, power was vested in commissioners appointed by the King, to turn out what officers in corporations they thought fit, and to place other persons in their room; and it was further enacted \*, that "after the expiration of the "said commissions" (which by a subsequent clause † were to determine on the 25th March, 1663), "no person or persons "shall ever hereafter be placed, elected, or chosen in, or to, "any of the offices or places aforesaid ‡, that shall not have, "within one year next before such election or choice, taken "the Sacrament of the Lord's Supper, according to the rites "of the church of England," and in default thereof every such placing, election, and choice, was thereby declared to be void.

Mr. Hume § gives the following account of this Act: "During the violent and jealous government of the Parliament and of the Protectors, all magistrates liable to suspicion had been expelled the corporations, and none had been admitted who gave not proofs of affection to the ruling powers, or who refused to subscribe the covenant. To leave all authority in such hands, seemed dangerous; and therefore the Parliament empowered the King to appoint commissioners for regulating the corporations, and expelling such magistrates as either had obtruded themselves by violence, or professed principles dangerous to the constitution, civil or ecclesiastical."

The history of this Act, as taken from the Parliamentary Journals, agrees with the account of Mr. Hume. It appears that the Corporation Act originated in the House of Commons, and that when it was sent up to the Lords it did not contain the clause requiring persons elected to corporate offices to take the Sacrament, the preamble only briefly stating, "that the succession in corporations might be most probably "perpetuated in the hands of persons well affected to his Majesty, and the established government." The Lords made several alterations, and added the following words to the former preamble ||, "it being too well known that notwithstanding all his Majesty's endeavours, and unparalleled indul-

\* 13 Car. II. c. 1. sect. 12.

† Sect. 13.

‡ The offices and places before mentioned in the Act, are those of Mayor, Alderman, Recorder, Bailiff, Town Clerk, Common Councilman, or any office or offices of Magistracy, or places, or trusts, or other employments, relating to or concerning the government of the several cities, corporations, and boroughs, and cinque ports, and their members," within England, Wales, and Berwick upon Tweed.

§ Hist. Eng. Vol. VII. p. 383. || Com. Journ. Vol. VIII. p. 336.



“ gence in pardoning what is past, nevertheless many evil spirits are still working; wherefore, for prevention of the like mischief for the time to come, and for preservation of the public peace both in church and state.” And at first the Lords new-modelled the whole of the bill; endeavouring, for instance, like true friends of despotism, to make this temporary expedient a “ perpetual change;” and inserted a clause \* directing that by the 24th of June, 1662, all Corporations should renew their charters, under penalty of their becoming null and void; and another clause †, that the King, in the manner prescribed in the Act, should have power to appoint the Mayor or Chief Magistrate, with the Recorder, and Town Clerk, of every Corporation, as vacancies might happen! But when the bill was sent back with these amendments for concurrence, the spirit of independence warmed the Commons into opposition: they objected ‡ to giving a permanent increase of power to the Crown, when they had only proposed a temporary expedient; they refused to commit a breach of trust, by destroying the rights of their constituents; and demanded a conference with the House of Lords. After several conferences, the Lords gave up or altered all these objectionable clauses; but unfortunately, when the bill had been nearly five months under consideration of the two Houses, and after two conferences they were nearly agreed §, an adjournment took place. When they met again it should seem that the clause which imposed the Sacramental Test, and was the only part of the bill not of a temporary nature, was proposed in the House of Lords || with other amendments; and the Commons having afterwards agreed to those amendments ¶, the bill was passed. Thus the clause in question, so far from being a principal, or even collateral object of either House of Parliament, was not so much as thought of till after they had had two conferences upon the other parts of the bill; and after its general scope had been perfectly settled. Few can doubt against whom this clause was levelled; for, up to that time, the sacrament had been designed as a test from persons addicted to popery only; and protestant dissenters were *then* almost universally communicants in the church.

But, contrary to the fact, let it even be admitted that this clause of the Act was framed expressly to exclude all protestant dissenters, was it not then a breach of the King's declaration from Breda? and had not the presbyterians, in particular, reason to complain of treachery and injustice? Founded upon his letter from Breda, the King issued a declaration to conciliate the religious differences which divided

\* Com. Journ. Vol. VIII. p. 310. † Ibid. ‡ Ibid. p. 312.  
§ Ibid. p. 313. || Lords Journ. Vol. IX. p. 349. ¶ Com. Journ. Vol. VIII. p. 338.

his subjects ; and a bill was brought into the House of Commons for giving full effect to it, but it was thrown out upon the second reading \*. The Presbyterians were then amused with hopes of such alterations being made in the liturgy and discipline of the church of England, as should comprehend them within the establishment ; and the proposed alterations were actually under consideration at the time the Corporation Act was passed.

If the King had been faithful to his engagements, the Presbyterians could have felt no inconveniences from the enforcing of this Act ;—*they* were not the evil spirits mentioned in the preamble ; on the contrary, they were well affected to his Majesty, whom they had placed upon the throne, and to the government which they had just established. Nor was it probable, that they would be excluded by the clause requiring persons elected into corporate offices after the 25th of March, 1663, to receive as a qualification the Sacrament of the church of England ; for they had not then separated from that church, but were to be comprehended within it. The Act did not require the Sacrament to be taken in the church of England as it was then established, but as it should be settled nearly two years afterwards ; when it might reasonably be expected the comprehension would have taken place.—Hence the apparent object of this Act was not the exclusion of the Presbyterians, or the security of the church and civil government *against them* ; but the security of the state, and of the intended comprehension, against all *other* sectaries.

The Crown having gained a vast accession of strength by the Corporation Act, no measures were afterwards kept with the Presbyterians. The memory of their past services, or of the King's solemn promise, no longer operated in their favour ; all hopes of a comprehension vanished ;—and the Act of Uniformity disgraced the annals of England. By that Act they received a deadly blow ; and more than two thousand of their ministers, who could not conscientiously comply with the terms of conformity, were driven from their livings. “ This “ Bill,” as the elegant historian † before cited remarks, “ reinstated the church in the same condition in which it “ stood before the commencement of the civil wars ; and, as “ the old persecuting laws of Queen Elizabeth still subsisted “ in their full rigor, and new clauses of a like nature were “ now enacted, all the King's promises of toleration, and of “ indulgence to tender consciences, were thereby eluded and “ broken.”

\* Ncale, Vol. II. p. 384.

† Hume, Vol. VII. p. 386.

## C H A P. II.

*History of the Test Act.*

THE treatment of the Nonconformists during the reign of Charles the Second, was one continued series of persecution and oppression. In direct violation of the King's declaration from Breda, many new penal laws were enacted against them; and the clergy of the established church warmly assisted the Court in persecuting them. By so doing, they hoped to render permanent the monopoly of power which the Act of Uniformity had unjustly given them; and their minds being heated with resentment, and their feelings highly worked up by the remembrance of their own sufferings during the civil war, they shewed in return, as they had found, no mercy.—But the King had other objects in view. He was himself secretly of the Roman Catholic religion; and by treating the Nonconformists with severity, he hoped to obtain a toleration for those who professed it. On the other hand, the majority of every House of Commons throughout this reign had a rooted hatred and dread of popery, and although at the beginning of the first Parliament, they fell in with the resentments of the King and church, yet in a few years they discovered their error, and the danger to which they exposed the nation. The latter part of this reign was therefore passed in continual disputes between the House of Commons and the Crown; the latter struggling hard to protect Papists from persecution, the former pressing for further severities against them.

After the Act of Uniformity had severed the Presbyterians from the church, (viz. on the 5th of May, 1663,) a bill was ordered to be brought into the House of Commons\* “for disposing all offices military and civil, into the hands of such persons as have been loyal subjects, and conformable to the church of England,” but nothing further was done upon it.—Here we have the first intimation of a design to exclude Nonconformists, accompanied with pretty strong evidence, from the bill being dropped, that the temper of the House of Commons was not yet possessed by the persecuting spirit of the Court, and that some further test was then requisite to exclude protestant Nonconformists than the bare receiving of the Sacrament according to the rites of the church of England. For if the ministers of the Crown had required no other Test, is it probable that the House of Commons (in which the Dissenters had been daily losing ground) would have objected to a Test which they had themselves submitted to, or to re-enacting the clause, already inserted in the

\* Com. Journ. Vol. VIII. p. 476.



Corporation Act; more especially when it would have materially diminished the influence of popery, which they feared and hated?

Some years afterwards, the arbitrary proceedings of the cabal occasioned a general distrust of the King and his government; and to secure the Nonconformists, he issued a proclamation (dated the 15th of March, 1671), suspending, by a dispensing power, usurped as inherent in the royal prerogative, all the penal laws; and granting to the protestant Nonconformists public places of worship; to papists, the freedom of religion in their own houses.—This usurpation of absolute power, roused the drooping spirit of liberty; and the common danger united protestants of all denominations. The Dissenters accepted the indulgence; but provoked the resentment of the Court, by reprobating the exercise of prerogative which gave it.

The Parliament, after prorogations continued for nearly two years, met on the 4th of February, 1672-3; and this session is distinguished as a brilliant æra in the history of British freedom. They met in a general crisis of anxiety and alarm: the King was suspected to be a papist; his Queen was known to be one; the Duke of York, who was to succeed to the crown, had lately declared himself of the communion of the church of Rome; and he, with Lord Clyfford, and others of the same persuasion, were invested with the powers of government. The shutting up of the Exchequer\* had dealt out distress and ruin to private families. The penal laws were suspended by a royal proclamation issued, in defiance of acts of parliament, to protect papists in the exercise of their religion, and in the enjoyment of public offices. An army raised without authority of Parliament, having in it many popish officers, and commanded by a foreigner, was encamped at Blackheath, to overawe the proceedings of parliament; and a war was begun, to destroy the only protestant power in Europe, from which the friends of civil and religious freedom could expect support.—Words cannot express the terror and consternation which pervaded the kingdom; and with trembling expectation, the meeting of the House of Commons was looked to, as the last hope of expiring liberty.

Charles opened the session, by declaring in high terms his resolution to maintain his declaration of indulgence; and that, instead of diminishing, he intended to increase his army. “But the House of Commons, with a true English spirit, remonstrated in an address, that the dispensing power he had

\* Lord Clyfford suggested this expedient to procure money for the Dutch war; but it did not succeed, and the King's distress compelled him to call a parliament, and pass the Test Act, to get a supply.

“ asserted



“ asserted in his declaration, belonged not to his crown ; and  
 “ when Charles gave an ambiguous answer, they insisted in a  
 “ second address for one more explicit. In another, they pres-  
 “ sed him to dismiss the popish officers of his army ; and in a  
 “ fourth, to disband his army itself, so soon as the peace was  
 “ concluded. \* \* \* Charles declined a conflict with his parlia-  
 “ ment, relinquished his pretensions to a dispensing power,  
 “ breaking with his own hands the seal affixed to the declara-  
 “ tion of indulgence in which it had been asserted, declared  
 “ his own inclinations to give satisfaction to his people, and  
 “ exposed his new ministers to their vengeance \*.”

Several members having, in the committee for forming the first address against the declaration of indulgence, expressed a strong desire, that the protestant Dissenters might have a legal instead of an unconstitutional toleration ;—a bill was, on the 14th of February 1672-3, ordered *nemine contradicente*, to be brought in, for the ease of protestant Dissenters † ; and a day appointed to consider of the subject matter of it in a committee of the whole house. The bill passed the House of Commons, but the Lords making some amendments, a conference took place ; and while the Commons were debating upon the report ‡, a message came from the King requiring their *immediate* attendance in the House of Peers ; and he ordered them to adjourn till the 20th of October following. This was on the 29th of March 1673, when he was come to give the royal assent to the Test Act ; and this interruption seems to have been the effect of contrivance, for the debate was so suddenly broken in upon by the black-rod knocking at the door, that the Commons had not time even to put the question of adjournment §.

After this bill was committed, the Court party moved, that it might be given as an instruction to the committee, that  
 “ such as do dissent from the church of England shall be unca-  
 “ pable to serve as members of this House ;” but it passed in the negative 163 to 107 ||. The debate turned principally upon the impropriety of inserting such a clause in a bill meant for the ease of protestant Dissenters ; but a separate bill for that purpose was immediately ordered ¶, which was afterwards presented \* †, and dropped.—This circumstance alone is a decisive proof that the majority of the House of Commons had not formed a design to exclude the Dissenters from all public trust, and affords a strong argument that in passing the Test Act they were governed by other views ; more especially when it is remembered, that the Test Act does not extend to mem-

\* 1 Dalr. Mem. p. 37, 38. † Com. Journ. Vol. IX. p. 252.  
 † Ibid. p. 281. § Grey's Deb. Vol. II. p. 180. || Com.  
 Journ. Vol. IX. p. 266. ¶ Ibid. \* † Ibid. p. 270.

bers of parliament. Both objects were before them *at the same time*, and we must either suppose that the Dissenters were deemed proper persons to be members of parliament, but unfit to be in any office; or, that the House of Commons considered them as competent for both, and unintentionally affected some of them by a bill levelled against papists only. In fact, the public danger swallowed up every other consideration; and the terror of popery induced the church to court the protestant Dissenters, and the House of Commons to take them into favour.—The committee of the whole House reported the heads of the bill for the ease of protestant Dissenters, on the 27th of February 1672\*;—and on the day after†, it was resolved, *nemine contradicente*, that an address should be presented to his Majesty for suppressing the growth of popery; and it was also resolved, that it should be drawn up from the subject matter of a former address of the 26th of October, 18 Car. II.—It was further resolved, that a bill be brought in “for the incapacitating of all persons who shall refuse to take the oaths of allegiance and supremacy, and the sacrament according to the rites of the church of England, of holding any public employments military or civil;” and it was referred to the committee appointed to draw up the address for suppressing of popery to prepare it.—On the 3d of March, 1672, the address was reported‡, praying, that his Majesty would issue his proclamation for all priests and jesuits to depart the realm within thirty days; that the oaths of allegiance and supremacy might be tendered “to all officers and soldiers” then in his Majesty’s service and pay; and that those who refused, might be disbanded, “and not allowed or continued in any pay or pension;” and that no officer might be permitted to be mustered, “until he shall have taken the oaths of allegiance and supremacy, and received the sacrament of the Lord’s Supper, according to the laws and usage of the Church of England; and that every soldier serving at land shall take the said oaths before his first muster, and receive the sacrament in such manner before his second muster.” The Lords concurrence was desired to this address. The Lords endeavoured to confine the address to *land officers*, and to strike out the word *pensions*; but the Commons not consenting, it was agreed to, and presented to the King on the 7th of March§ in its original form, as the address of both Houses.—In the mean time the bill for incapacitating papists was not forgotten. The Test Act was read the first time on the 5th of March¶; and such was the expedition used, that it was read a second time the next day¶¶, and passed and sent up

\* Com. Journ. Vol. IX. p. 258.  
p. 261.

§ Ibid. p. 265.

† Ibid. p. 259.  
§ Ibid. p. 263.

‡ Ibid.  
¶ Ibid.

to the Lords on the 12th of that month\*. In order to secure this bill, the supply was delayed : and the event shewed that this precaution was not unnecessary ; for the bill for ease of the Dissenters, which was brought in *before* the Test Act was thought of, being postponed till the King had got a supply †, was thereby lost.—The moderation with which the Dissenters conducted themselves in this awful crisis gained the affection and confidence of the House of Commons, whose constant endeavour was ever afterwards to screen them from the vengeance of a disappointed tyrant. The Dissenters, who were members of the House of Commons, heartily concurred in passing an act which then affected very few of their brethren, and to which, however indefensible it may be in its principle, we are, perhaps, indebted for the portion of liberty we now enjoy. The political disorders of the state were far advanced, and violent remedies were held necessary to work a cure.

The Test Act provides ‡, that every person who shall be admitted, entered, placed, or taken into any office, civil or military, “or shall receive any pay, salary, fee, or wages, by reason of any patent or grant of his Majesty §, or shall have command or place of trust from or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them,” within England, Wales, or Berwick upon Tweed, “or in his Majesty’s navy, or in the several islands of Jersey and Guernsey,” or shall be admitted into any service or employment in the household or family of his Majesty, or of his Royal Highness the Duke of York ; shall take the oaths as directed in the act, and “shall also receive the sacrament of the Lord’s Supper according to the usage of the church of England, within three months after his or their admittance in, or receiving their said authority or employment, in some public church, upon some Lord’s day, commonly called Sunday, immediately after divine service and sermon.”

This act did not extend to any right, power, privilege, or profit, which any peer had or ought to enjoy, by reason

\* Com. Journ. Vol. IX. p. 267.

† The royal assent was obtained to the Test Act on the 29th of March, 1673, by presenting it along with the bill for a supply.

‡ 25 Car. II. c. 2. s. 2.

§ The 11th section enacts, that this shall not “make void any pension or salary granted by his majesty to any person, for valuable and sufficient consideration, for life, lives, or years, other than such as relate to any office, or to any place of trust under his majesty, and other than pensions of bounty or voluntary pensions.”

of his peerage; nor to take away creation money or bills of impost; nor to take away or make void any pension or salary granted by his Majesty to any person, for valuable and sufficient consideration, for life, lives, or years; other than such as relate to any office, or to any place of trust under his Majesty; and other than pensions of bounty and voluntary pensions.

Offices of inheritance \* created by his Majesty or his predecessors, and fees, salaries, and rewards for executing them, are excepted out of this act; on the persons intitled to them appointing deputies, who are to qualify, as the principals must have done, and be approved by the king. Non-commissioned officers in the navy †, are required only to subscribe the declaration against transubstantiation, as appointed by the act. And it is expressly declared ‡ not to extend to “the office of any high constable, petty constable, tythingman, headborough, overseer of the poor, churchwardens, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chace, or warren, or game, or of bailiff of any manor or lands, or to any like private offices, or to any person or persons having only any the before-mentioned or any the like offices.”

Every person not having taken the oaths and the sacrament as prescribed §, is *ipso facto* adjudged incapable and disabled in law to hold any of the above offices or employments, “or any matter or thing aforesaid, or any profit or advantage appertaining to them,” and every such office and place and employment is rendered void. Besides, if any person shall execute any of the said offices or employments, without having qualified as required by the act ||, “and being thereupon lawfully convicted, in or upon any information, presentment, or indictment, in any of the King’s Courts at Westminster, or at the assizes,” he “shall be disabled from thenceforth to sue or use any action, bill, plaint,

\* Sect. 11.

† Sect. 15.

‡ Sect. 17.—It is worthy of notice, that all the exceptions in the Test Act, and all the alleviations of its general effects, were inserted by the House of Lords ¶, where the Court had most power. To them it was owing, that by this clause, Constables and other inferior officers, not qualifying, were exempted from the enormous penalty of 500*l.* and the consequent disabilities. The Lords attempted to throw an obstacle in the way of prosecutions, by giving one moiety only of the penalty to the informer, and the other moiety to the king, but the Commons would not consent “because of the trouble and charges of the prosecution.” The Lords also proposed that it should be limited to *public* offices; but the Commons would not admit of the alteration.

§ Sect. 4.

|| Sect. 5.



“ or information in course of law, or to prosecute any suit  
 “ in any court of equity, or to be guardian of any child,  
 “ or executor or administrator of any person, or capable  
 “ of any legacy or deed of gift, or to bear any office”  
 within England, Wales, or Berwick upon Tweed, and  
 shall forfeit 500l. to be recovered by him or them that shall  
 sue for the same.

The preamble states the design of the act to be “ for pre-  
 “ venting of dangers which may happen from popish recu-  
 “ sants, and quieting the minds of his majesty’s good sub-  
 “ jects;” and the most virulent enemies of the Noncon-  
 formists, are obliged to admit that *their* exclusion from offices  
 was not its primary object.—In truth, the circumstances  
 before related do not admit of such a supposition. They  
 were at that moment in high favour with the House of Com-  
 mons, from their having refused to recognize the king’s  
 usurpation of a dispensing power; and while the Test Act  
 was in agitation, their conduct attached the House still more  
 strongly to their cause, for they openly condemned the ar-  
 bitrary proceedings of the Court, and refused to listen to any  
 accommodation. Some of the Court party had endeavoured  
 to persuade them to press forward the bill for ease of Protestant  
 Dissenters, hoping to occasion a breach between them and the  
 House of Commons; but, in answer to these insidious attempts,  
 Alderman Love, one of the members for the city of London,  
 and one of the very few Dissenters who scrupled to receive the  
 sacrament according to the rites of the church of England, de-  
 clared in the debate\*, that it was his wish that “ an effectual  
 “ security might be found against popery, and that nothing  
 “ might interpose till that was done: when that was over,  
 “ the Dissenters would try to deserve some favour, but at pre-  
 “ sent they were willing to lie under the severity of the laws,  
 “ rather than clog a more necessary work with their con-  
 “ cerns.”

Whether the Dissenters upon this occasion acted *wisely*  
 may be disputed; but that they acted *generously* in thus dis-  
 daining the offers of the Court, and preferring a continuation  
 of their sufferings under penal laws, to an unconstitutional  
 exemption from them, no one can deny. They cordially  
 united even with those, who had persecuted them without  
 mercy, in repelling the attempts of the crown to destroy  
 the civil and religious liberties of their country. In such  
 a cause they braved the lash of persecution, and disdained  
 to purchase security and peace, by a desertion of their prin-  
 ciples.

\* Burnet’s Own Times, Vol. I. p. 347.

The effect of the Test Act was instantly felt in every department of government. The Duke of York resigned his office of Lord High Admiral, and Lord Clifford, then Lord High Treasurer, with other Roman Catholics about the court, followed his example; but so little did it operate against Protestant Nonconformists, that there is not the smallest trace in history of even *one* of their number vacating an office in consequence of it.

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## C H A P. III.

*Historical account of the Test Laws from the passing of the Test Act to the present Time.*

### S E C T. I.

*In the Reign of Charles II.*

**T**HE House of Commons met, after a long adjournment, on the 20th of October 1673, and continued in the same favourable disposition towards the Dissenters. A bill\* was ordered in, “ for a General Test, to distinguish between Protestants and Papists: *and those that shall refuse to take it be* “ *incapable to enjoy any office, civil or military; or to sit in,* “ *either House of Parliament; or to come within five miles of* “ *the court, and a Committee appointed to prepare it.*” From this title, or rather instruction to the Committee, the object of the bill must have been to repeal the Test Act, and to fix upon some more general Test for admission to offices, which should exclude the Roman Catholics, but should not affect Protestant Dissenters.—This bill was first mentioned on the 30th of October; but the King found the temper of the House so exceedingly hostile to the Duke of York and the Roman Catholics, and so strongly disposed to favour the Dissenters, that he put an end to the session by prorogation on the 4th of November, the House having sat only fifteen days.—By this step, the bill for ease of the Dissenters, which was under consideration when the Test Act received the royal assent and the King adjourned the Parliament, was lost; for, during the short space of time just mentioned, the intended marriage of the Duke of York to the Princess of Modena, and the bill for a Test to distinguish be-

\* Com. Journ. Vol. IX. p. 284.

tween the Dissenters and Papists, which might be considered as a debt of honour, occupied the whole attention of the House.

The Parliament being assembled in January, 1673; on the 21st of \* that month, the friends of the constitution introduced again the bill for a Test to distinguish between Protestants and Papists. Its title was now so altered, as to shew that the bill was meant also to encourage the prosecution of the latter †. The Test proposed by this act ‡ was a declaration against popery, such as was afterwards made the qualification for a seat in Parliament. It was read twice and committed, but was lost by a prorogation, on the very day appointed for receiving the report of the Committee. In this manner the King frustrated, for the *second* time, the good intentions of the House of Commons towards the Dissenters, and at the distance of one hundred years their descendants have to complain that, to the disgrace of their country, they are still involved in an incapacity which was meant for others: Hard has been the lot of the Dissenters! They were persecuted by a King who had solemnly pledged himself to give them indulgence; and deprived of the rights of citizens, in a crisis of public danger, by a House of Commons, who had every favourable disposition towards them. When the same House of Commons attempted to remove that mark of reproach, the same King prevented it; and the body of Dissenters have been ever since unjustly excluded from all offices, through the opposition of a church which owes its present existence to them.

After the House of Commons had been thus prevented from extending to Protestant Dissenters the benefits of a legal and *complete* toleration, they were reduced to a miserable condition. The King had cancelled the Declaration of Indulgence, and they were not only left, as before it was published, exposed to all the severities of the penal laws, accompanied with the exclusion contained in the Test Act; but there was this further aggravation of their misfortunes, that their conduct had firmly rivetted in the mind of the King, that enmity to their principles, which he inherited from his father, and which had manifested itself before upon various occasions. For the remainder of his reign, he made them feel the rod of persecution; and when the Commons

\* Journ. Vol. IX. p. 296.

† Ordered, That a Committee be appointed for the preparing one or more Bill or Bills for a *general Test, to distinguish between Protestants and Papists; and to prevent the danger and further growth of popery; and for a more easy and speedy conviction of popish recusants; and those who shall refuse to take it be incapable to enjoy any office, military or civil, or to sit in either House of Parliament, or to come within five miles of the Court.*—21 Jan. 1673. Com. Journ. Vol. IX. p. 296.

‡ Chand. Deb. Vol. 1. p. 197, 198.

pressed to have the laws against Papists enforced, they were always executed at least with an equal degree of severity against Protestant Dissenters. Their conduct throughout their unmerited sufferings would have done honour to the primitive martyrs; neither menaces nor stripes could compel them, nor promises nor acts of favour allure them to desert the cause of a country which had cast them off as citizens; but, regardless of their own ease and interest, they were foremost to resist the usurpations of the only power that could shield them from persecution.

It is not my intention to enter further into the history of the Dissenters, than is immediately connected with the Sacramental Test. I shall therefore only observe in general, that the disposition of the House of Commons which passed the Test Act, and was dissolved in 1678-9, continued to the last favourable in the highest degree to the Nonconformists; and that one of the concluding acts of its political life was to provide a Test\*, which should allow Dissenters to sit in either House of Parliament, but should exclude Papists.

In the beginning of the next Parliament, only eight years after the Test Act passed, certain Commissioners named † for raising a supply, are expressly declared not to be under any necessity to qualify themselves according to its provisions.

The heats occasioned by the Bill of Exclusion continued to the end of this reign, and three successive Parliaments were dissolved on its account. In the year 1680, a feeble effort was made towards a comprehension of part of the Dissenters within the national church; but the bill for that purpose was dropped for one to relieve them from all the penal Acts made in the reigns of Elizabeth and James against Popish Recusants ‡; which, by an extraordinary piece of political legerdemain, was not to be found, when it should have been presented for the royal assent.—At this period the resentment of the clergy against the Dissenters broke out afresh, and the King diligently nurtured the seeds of discord.—The friends of the Dissenters forming still a majority in the House of Commons, brought in a bill to repeal the Corporation Act §, which was read a second time, and referred to a Committee. While this bill was depending, another came down from the Lords ||, entitled, “An Act for distinguishing Protestant Dissenters from Popish Recusants;” which, for

\* The declaration against popery. The Act (30 Car. II. Stat. 2.) passed in 1678, after it had been fruitlessly attempted in the four preceding sessions.

† 31 Car. II. c. 1. Gib. Cod. Vol. I. p. 658. ‡ Com. Journ. Vol. IX. p. 661. Ibid. p. 692, 696, 700. § Ibid. p. 697.



reasons given at large by Dr. Furneaux\*, he thinks had for its object the repeal of the Test Act. It does not appear that there was any opposition to either of these bills, but all proceedings upon them were ended by the sudden prorogation of Parliament. The House of Commons, gaining a few minutes previous notice of the King's intention to prorogue them, contrived in a hasty manner to pass some resolutions on the state of the nation, and in favour of the Dissenters †. These resolutions, made by the second House of Commons, after that which passed the Test Act, are an honourable testimony of the merits of the Dissenters, and shew that their services were not then forgotten. The Parliament was soon after dissolved by proclamation, and the Dissenters left for the remainder of this reign to the mercy of the King and the Church. Under their afflictions, however, they had this consolation, that they were supported by the best friends of the constitution, and were persecuted by—the men, who brought Ruffel and Sydney to the scaffold.

## S E C T. II.

### *In the Reign of James II.*

THE persecution of Nonconformists under the penal laws, continued for about a year after the accession of James the Second, but during the residue of his short reign they had a respite from their troubles. The King's power to dispense with the laws was declared legal by ten out of the twelve Judges, and the Dissenters found an asylum from their persecutors in the bosom of prerogative. The church of England, which had basely deserted them in their adversity, was now shaken to its foundation, and the constitution was totally subverted. In this extremity they did not forget the precarious tenure by which they held this indulgence, but preferred the chance of a legal toleration, to servile dependence on the will of a prince.

\* Furneaux's Letters, p. 182, note.

† One of them was in these words: Resolved, nem. con. That it is the opinion of this House, that the prosecution of Protestant Dissenters upon the penal laws, is at this time grievous to the subject, a weakening of the Protestant interest, an encouragement to Popery, and dangerous to the peace of the kingdom. 10 Jan. 1680. Com. Journ. Vol. IX. p. 704.

Two months before, viz. on the 6 Nov. 1680, it had been resolved *nem. con.* That it is the opinion of this House, that the Acts of Parliament, made in the reigns of Queen Elizabeth and King James against Popish Recusants, ought not to be extended against Protestant Dissenters. *Ibid.* p. 647.

## S E C T. III.

*In the Reign of William III.*

**W**HEN the Prince of Orange was called to the throne of England, he strained every nerve to abolish religious distinctions among his Protestant subjects, and to obtain a repeal of those acts which unjustly excluded the tried friends of the constitution from offices.

He signified his wishes to that effect\* in council, and on Feb. the 28th, 1688-9 †, the earl of Nottingham moved in the House of Lords, for leave to bring in the Toleration Act. This motion was received with great applause, and on the 11th of March ‡ a bill was read the first time for uniting their Majesties Protestant subjects, the object of which was a comprehension of the Presbyterians. On the 14th of March §, a bill was presented to the same House, and read a first time, for abrogating the old oaths of allegiance and supremacy.

On the 16th of March ||, while all these bills were depending, the King came to the House of Lords to give the royal assent to the bill for annulling Lord Russell's attainder, and in a speech, addressed to both Houses of Parliament, he said, "Now I have the occasion of coming hither to pass this bill, which I hope will be for all our safeties, I shall put you in mind of one thing, which will conduce much to our settlement, as a settlement will to the disappointment of our enemies. I am, with all the expedition I can, filling up the vacancies that are in offices of trust by this revolution. I hope you are sensible there is a necessity of some law to settle the oaths to be taken by all persons to be admitted to such places. I recommend it to your care to make a speedy provision for it; and as I doubt not but you will sufficiently provide against Papists, *so I hope you will leave room for the admission of all Protestants that are able and willing to serve.*" This conjunction in my service will tend to the better uniting you among yourselves, and the strengthening you against your common adversaries." This generous proposition originated entirely with the King himself, and only lord Halifax and Mr. Hampden ¶ saw the speech before it was delivered.

The bill for abrogating the old oaths, was afterwards read a second time \*\*, and referred to a Select Committee †. This

\* 1 Dalr. Mem. p. 352.

† Lords Journ. Vol. XIV. p. 134.

‡ Ibid. p. 145.

§ Ibid. p. 148.

|| Ibid. p. 150.

¶ 1 Dalr. Mem. p. 352.

\*\* Lords Journal, Vol. XIV. p. 153.

† Ibid. p. 154.

Committee proposed a clause to take away the necessity of receiving the Sacrament to make persons capable of holding offices, which was referred to the assistants of the House to draw up \*. When this clause was, on the 21st of March, reported to the House, it was disagreed to †. On the 23d of March ‡ the friends of the Dissenters moved, that a clause should be inserted as a rider, to make persons capable to be admitted to any office or employment, who within one year next before, or within one year next after their admission, should receive the Sacrament according to the usage of the church of England, or in any Protestant congregation, provided a certificate was delivered of their having received the Sacrament under the hands of a minister, and two other credible persons of such Protestant congregation, and proved by two credible witnesses on oath. But this clause met the same fate with the former. The protest made upon this occasion is well worthy of perusal, but is too long to be inserted here.

The proceedings in the House of Lords related only to the Test Act; but a bill for repealing the Corporation Act was then before the House of Commons. It was read twice, and committed on the 1st of April, 1689 §; but the triumph of opposition in the House of Lords, had given spirits to their friends, and a motion was made, "That it be an instruction to the Committee, that none shall be admitted to any place of magistracy, unless he have within a twelvemonth before received the Sacrament according to the church of England." Upon this it was moved by the court party to adjourn the further consideration of the question; which being carried by a majority of two only (116 to 114,) the Bill was given up.—Thus defeated in one great object, William did not relax in his endeavours to unite his Protestant subjects; but such was the temper of the times, that he could not effect his favourite de-

\* Lords Journal, Vol. XIV. p. 156.

† The following protest was entered. 1. Because a hearty union amongst Protestants is a greater security to the church and state, than any Test that can be invented. 2. Because this obligation to receive the Sacrament is a Test on Protestants, rather than on Papists. 3. Because so long as it is continued, there cannot be that hearty and thorough union among Protestants, as has always been wished, and is at this time indispensably necessary. 4. Because a greater caution ought not to be required from such as are admitted into offices, than from the members of the two Houses of Parliament, who are not obliged to receive the Sacrament to enable them to sit in either House. It was signed by the Lords North and Grey, Chesterfield, J. Lovelace, Delamer, Grey, Vaughan, Stamford, and P. Wharton.

‡ Lords Journal, Vol. XIV. p. 158.  
Vol. X. p. 74.

§ Com. Journals,

sign of a comprehension, and with great difficulty obtained the present imperfect toleration for such as dissented from the established church. A petition from the Common Council of the city of London was presented to the House of Commons\*, on the 25th of June, 1689, praying "That our most gracious King may be freed from all restraints of using his Protestant subjects indifferently, in his military or civil services, according to their several qualities and abilities, wherewith God Almighty, nature, education, and experience have endowed them, to that very end that they might be useful to their King and country, and therein serve God in their generation."

After the Revolution, a principal object of attention was to secure the new government against the attempts of Papists; and for this purpose a bill was brought into the House of Commons †, for vesting in the crown the pecuniary penalties inflicted by the Test Act; and a clause was inserted ‡ for payment of the money into the Exchequer, and for a distinct account to be kept thereof. This bill was opposed step by step in the House of Commons; but in vain, from these penalties being considered as part of the supply voted for the war. When it was ordered to be read a third time §, a rider was offered and rejected, that "the bill should not charge any person, who accepted any office or commission, and executed the same without qualifying himself," if such person did qualify himself as required before the 1st day of August then next. Another rider was received, that the Act should not extend to charge any person, who after October the 8th, and before February the 13th, 1688, accepted any office or commission, and executed the same without qualifying himself, if such person did qualify himself before August the 1st, then next; but the bill was afterwards lost in the Lords by a prorogation. From the latter rider it may be inferred, that the Protestant Dissenters had been zealous supporters of the Revolution, and had rendered themselves obnoxious to the laws, in defence of the civil and religious liberties of their country.

In this year, 1690, such was the anxiety of the House of Commons to guard against Papists §, that a bill was ordered in to explain the Test Act, providing that a conviction in an action for the 500*l.* should be a sufficient conviction to intitle the informer to the penalty, without any previous prosecution.

In the first Land Tax Act passed immediately after the Revolution ¶, the commissioners for raising and managing that

\* Com. Journ. Vol. X. p. 198.

† Chand. Debates, Vol. II.

p. 379.

‡ Com. Journ. Vol. X. p. 411.

§ Ibid. p. 415.

§ Ibid. p. 411.

¶ Gibb. Cod. Vol. I. p. 658.



tax, are exempted from the Test Act, and every subsequent Land Tax Act has contained a like exemption.

In the General Act for pardon \* passed in the second year of the reign of William and Mary, *the penalties of 500l.* incurred by any offences against the Test Act, are excepted out of the general amnesty; but in that passed in the 6th and 7th of William the Third † there was a general exception of *all offences* against the Test Act; and so there was in that of Queen Anne ‡, and in the two general acts for pardon in the reign of George the First §.

## S E C T. IV.

*In the Reign of Queen Anne.*

**D**URING the reign of Queen Anne the Dissenters could expect no favour; their spirited efforts in opposition to the prerogative doctrines of the court, and the project of restoring the Pretender, had marked them out for objects of persecution. The Toleration Act protected them from the penal statutes, by which they had been so severely afflicted; but, as has been observed before, many of their body had been from the first accustomed to receive occasionally the Sacrament of the Lord's Supper, according to the rites of the church of England ¶, and of course were eligible to offices. To prevent this practice, a bill was passed by the House of Commons, in 1702, immediately after the accession of Queen Anne, intitled, *an Act for preventing occasional Conformity*; requiring all persons who should accept of offices, not only to take the Sacrament of the Lord's Supper,

\* Gibb. Cod. Vol. I. p. 658. 2 W. & M. c. 10. † 6 & 7 W. III. c. 20. ‡ 7 Anne, c. 22. § 3 Geo. I. c. 19. ¶ 7 G. I. c. 29.

¶ “ As for this occasional conformity, the Lords † do not go about to excuse or to defend it; but they who have observed the progress of these matters, and have borne a large share in these controversies, must acquaint the Commons, that it is no new practice invented to evade the law; it has been both the principle and practice of some of the most eminent among the Dissenters, ever since St. Bartholomew's in the year 1662. It is known that Baxter and Bates did still maintain it, and that several books have been writ about it; and as the fiercest of the Dissenters who intended to keep up a wall of partition between them and the church have opposed it much; so that party of Dissenters that came nearest the church, and of whom the greatest numbers have come over to it, are those that pleaded for it. Nor is it a certain inference, that becau a man receives the Sacrament in the church, he can therefore conform in every other particular; \* \* \* \* it does not necessarily follow.”

Supper, but to conform strictly to the worship of the church of England, during all the time they held them. The court influence was exerted to the utmost to carry this bill in the House of Lords. Even Prince George of Denmark, who had received the Sacrament according to the rites of the church of England, to hold his office of Lord High Admiral, but kept his chapel in the Lutheran way, and was himself only an occasional Conformist, was obliged to vote for the bill\*. It was strongly opposed by the Whigs; amendments were made; and after a free conference with the House of Commons, neither House being inclined to give way, the bill was lost. It was again passed by the Commons, with some alterations, in 1703, and 1705; but was each time rejected by the Lords. Upon the latter occasion, the Queen was present at the debate. In 1711 it was brought into the House of Peers by the Earl of Nottingham, who had deserted the Tories; and passed both Houses without opposition. The Dissenters complained heavily of being thus forsaken at last; but it was generally understood that the Earl of Nottingham had stipulated with the Whigs, that this bill should pass, as the price of his apostacy.

In the year 1706, when preparatory to the union between England and Scotland, an act was to be passed for securing the church of England, and to be one of the fundamental essential articles of the treaty and unalterable for ever; a motion was made in the House of Commons to insert the Corporation and Test Acts†, and thus to render them irrevocable by any future Parliament, but it was negatived. A similar attempt had been made in the House of Lords‡, as to the Test Act only, which had been equally unsuccessful.

In this reign was passed the *first act*, by which the time for taking the Sacrament, as a qualification for an office, was extended beyond the limits mentioned in the Test Act. In the year 1709 (four years after the Union) an Act was passed in favour of Dr. Henry Newton, Doctor of Laws, who is stated

“sarily follow, that therefore every man who is satisfied with this, should be likewise satisfied with every other part of conformity. There was a very learned and famous man that lived at Salisbury, Mr. Tombs, who was a very zealous Conformist in all points but one, Infant Baptism; so that the receiving the Sacrament does not necessarily import an entire conformity in every other particular.” Reasons prepared by the Lords for the conference on the occasional Conformity Bill in 1702.

See also Bishop Burnet's speech in 1703.—“In my diocese,” said he, “those who are occasional Conformists out of principle, who sometimes go to church, and go sometimes to meetings, are without number; who yet have no office, and seem to pretend to none. I confess I do not desire to press it too hard upon them, that they may not do both, left this, instead of keeping them from meetings, hinder them from coming to church.”—Lords Debates, Vol. II. p. 56.

\* Burnet's History of his own Times, Vol II. p. 338.  
Journ. Vol. XV. p. 283.

† Ibid. Vol. XVIII. p. 225.

‡ Com.  
therein

therein to have been her Majesty's Envoy Extraordinary to the Great Duke of Tuscany; who *being appointed in his absence*, Master of St. Catherine's Hospital near the Tower, *could not* qualify himself by receiving the Sacrament, &c. within three months as required by the Test Act; and it was enacted, that if he should qualify within three months *after his return from beyond seas*, &c. he should be deemed to have qualified as fully and effectually, as if he had done so within the precise time required by law.

The same exemption from the Test Act\*, which had been regularly made in favour of the *commissioners* of the Land Tax, was in the first year of Queen Anne<sup>e</sup> extended to the *collectors* and *assessors*; and has been continued in all subsequent acts down to this time.

In the last year of the Queen's reign was passed the Act to prevent the growth of schism, by which certain restrictions were imposed on the toleration granted to Nonconformists. This Act was to have taken place on the very day on which the Queen died, but owing to that event was never put in execution.

## S E C T V.

### *In the Reign of George I.*

**A**T the death of Queen Anne the prospect of the Dissenters brightened; and their opposition to the Pretender, which had been a source of misfortune to them in the last reign, gave them a strong claim to favour and indulgence with her successor. They were no longer under apprehensions of persecution, and indulged themselves in the pleasing hope of obtaining a more enlarged and liberal toleration. But the temper of the times was not favourable; and the cry of, "*the church is in danger*," raised in the days of Sacheverel, still echoed through the nation. So prevalent was that cry in the beginning of this reign, that it required considerable exertions on the part of the Crown, to secure the Dissenters even from personal violence; and it was not till 1718, five years after the accession of the House of Hanover, that the occasional Conformity and Schism Acts were repealed.

Before the grand effort was made, the temper of the two Houses was tried by the extension of a faint glimmering of indulgence to some of the Protestant Dissenters. A bill, which passed the House of Lords on the 17th of March, 1717-18†, concerning the hospitals and workhouses within the city of Bristol, repealed a clause in a former Act, passed in the 12th of Queen Anne, enacting, that no person should be guardian for the poor there, who did not qualify as appointed by the

\* Gib. Cod. Vol. I. p. 658. † Lords Journ. Vol. XX. p. 655.  
Com. Journ. Vol. XVIII. p. 670. See too the Lords Deb. Vol. III. p. 93.



Test Act. So that the legislature now intended that Dissenters should be guardians of the poor, within the city of Bristol, without any sacramental qualification. Several Lords entered a protest against this bill.

In the bill for repealing the occasional Conformity and Schism Acts, as first moved in the House of Lords, was a clause for taking away those sections in the Corporation and Test Acts, by which Protestant Dissenters are obliged to receive the Sacrament according to the usage of the church of England, to qualify themselves for offices: but the strength of the Court was overborne by the high church party, and the clause was rejected after the bill was committed\*: the bill itself was not carried without great difficulty, particularly in the House of Commons, where the majority consisted of forty-one only†.

The favour granted to Dr. Newton may have given the hint on which was framed the first general Act of Indemnity, for those who had omitted to qualify themselves for offices within the times limited by the Test Laws. At that period, such an act, operating like a general pardon, might be necessary to give popularity to the King, and to still the ferment of party; but of late, it has been found necessary to pass such acts annually for other reasons. By the 1 Geo. stat. 2, c. 13, sect. 23, all those who should qualify themselves by receiving the Sacrament on or before the 1st of December then next ensuing, according to the usage of the church of England, were indemnified against all penalties, &c. incurred by any former omission, and were recapacitated and restored; and so, by sect. 24, were all who had received it since the accession of the King. This was followed by the 13 Geo. c. 29, whereby it was provided, that the Test Act should not extend to persons who, on the 17th of January, 1726, or after, were, or should be on board the fleet of his Majesty, his heirs or successors, or in his or their service beyond the seas, at such time as any office was granted, &c. to them; so as they should, within three months after their return to *Great Britain* † receive the Sacrament, &c. as required by that act, &c. All persons theretofore on board the fleet, and beyond sea, were also indemnified, on receiving the Sacrament before the last day of Michaelmas Term, 1727.

By the law of England the computation of time is by *lunar* months: consequently the three months limited by the Test Act, having no words of description annexed, must be taken for *lunar* months, exactly as if they had been

\* Lords Deb. Vol. III. p. 99. &c.  
† p. 191, 192.

† Chand. Deb. Vol. VI.

‡ In the modern Acts of Indemnity, the time is made to run from the time of the party being returned to *England*. A military man might have returned to *Great Britain*, i. e. to *Scotland*, as required by the above act, and by being detained there on duty for more than three months, might most innocently have incurred the penalties of the Test Act.



so described. But by the 4th section of the 13th Geo. c. 29. they are declared "to have been meant, and shall be construed in future to mean, three *calendar* months." This was an ingenious contrivance to alter the Test Act, without giving umbrage to the church; for, by enacting that the words of a statute, "mean, and shall be construed to mean" the contrary of what they plainly import, it may be compleatly repealed, and still keep its place in the Statute Book.

In this reign too a material alteration was made in the Corporation Act; for, as we have before observed, the election of any person to a corporate office, who had not received the Sacrament according to the rites of the church of England within twelve months next preceding such election, was void; in consequence of which, many inconveniences had arisen. For example, it had actually been resolved, that if a man obtained judgment for a debt in an inferior court, it might be reversed, if it should be afterwards discovered that the court had been held before an officer not qualified according to that Act. It is needless to say, that this created great confusion in corporations, and rendered private property insecure.—To prevent these inconveniences in future, it was enacted in 1718\*, that all members of corporations, and all persons then in actual possession of any office within the Corporation Act, should be confirmed in their respective offices, notwithstanding their omission to take the Sacrament according to the rites of the church of England as required by that Act, &c.; and the Act goes on to say, "nor shall any person or persons, who shall be hereafter placed, elected, or chosen, in or to any the offices aforesaid, be removed by the corporation, or otherwise prosecuted for or by reason of such omission; nor shall any incapacity, disability, forfeiture, or penalty be incurred by reason of the same, unless such person be so removed, or such prosecution be commenced within six months after such person's being placed or elected into his respective office as aforesaid; and that in case of a prosecution, the same be carried on without wilful delay."—By this Act, *which is still in force*, a corporate office held by a person who has not received the Sacrament within twelve months next preceding his election, is not altogether void as the Corporation Act provided, but *voidable only for six months after his election, in case of a removal or of a prosecution commenced within that time*; and after an unqualified corporator has been allowed to remain unmolested in office for six months, he is discharged from all penalties, and has then as compleat a right, as if he had been properly qualified at first.

\* 5 Geo. I. c. 6. sect. 3.

## S E C T. VI.

*In the Reign of George II.*

OUR late excellent monarch George the Second was a friend to civil and religious liberty, and possessed the true spirit of charity for those who differed from him in opinion\*; yet, from a variety of concurrent circumstances, which need not be enumerated here, hardly any material alteration was made in the Test laws during his reign. In 1731, the Dissenters of Liverpool determined to apply to the legislature for relief. That they might have the greater chance of success, they proposed a general application of the Dissenters when the parliament should be drawing to a close; and hoped that, to secure their influence at the approaching general election, the Minister might be induced to hazard something in their favour. They corresponded with Bristol, and, with the assistance of that city, roused their brethren into activity. A committee was appointed in London to conduct the business, and at the end of 1732 †, every thing was concerted and arranged; but the committee deeming it *an unfit time* to proceed, the design was then laid aside. The Minister afterwards contrived to delay the application from time to time, till, having secured the interest of the Dissenters at the general election ‡, it was no longer necessary to amuse them.

The new parliament met in June, 1734, and on the 12th of March, 1735-6; Mr. Plummer § moved in the House of Commons for leave to bring in a bill to repeal that clause in the Test Act, which requires those who are admitted into offices

\* He put a stop to a prosecution in the ecclesiastical court against Dr. Doddridge, for setting up an academy at Northampton, "warmly declaring on the occasion that, *during his reign, there should be no persecution for conscience sake.*"—Orton's Life of Doddridge, p. 251, 252.

† "The righteousness of Test Laws, was now" (in the reigns of George the First, and George the Second) "discussed in form by the accurate Bishop Hoadly, and the principles on which they were defended in a religious light, so effectually exposed and disgraced; that even the abilities of the inimitable Sherlock were found unequal to the task of supporting them."—Preface to the first edition of the Confessional, p. 51.

Among the writers in favour of the Test were Bishop Sherlock, Bishop Gibson, Bishop Warburton (as he was afterwards made), Sir Archer Crofts, &c. Among those against the Test, Bishop Hoadly and Dr. Sykes of the church of England, and Dr. Chandler and Dr. Harris from among the Dissenters.

‡ In many counties and towns they entered into engagements mutually to support as candidates, *the friends of civil and religious liberty, and the House of Hanover.*

§ Chand. Deb. Vol. IX. p. 161.

to take the Sacrament according to the rites of the church of England; but it passed in the negative, 251 to 123. This motion was seconded by Sir Wilfrid Lawson, and supported by Lord Polwarth, Mr. Heathcote, and Mr. Holden; and was opposed by Lord Noel Somers, Mr. Danvers, Mr. Shippen, and Sir Robert Walpole, the then Minister\*, whose speech is preserved in Chandler's Debates. The Dissenters in the country, thus deserted by the Minister, by whom they had been promised support, and displeased with the delays of the committee, who had suffered *four* years to elapse before the motion was made, and had unwisely let slip the favourable moment presented at the conclusion of the former parliament, were much dissatisfied with their friends in London. This is perfectly clear, that the committee, if they meant well, were fairly outwitted; but the Dissenters at a distance not being within the influence of the Court, or feeling so strong an attachment to the administration, as to make *them* prefer *its ease* † to their own rights and interest, did not scruple to say that they were betrayed.

Another motion to repeal the Test Act ‡ was made in the House of Commons on the 30th of March, 1739, and negatived, 188 to 89. This was the last general effort of the Protestant Dissenters for obtaining the restoration of their civil rights.

In the same year, the governors and guardians of the Foundling Hospital §, with the other officers of that charity, were exempted from qualifying, as directed by the Test Act.

On the 18th of April 1740 ||, leave was given to bring in a bill of a more general nature, "to obviate certain doubts how

\* There is reason to believe, that the private sentiments of Sir Robert Walpole were not unfavourable to the application, and it is known that the King wished well to it; but the tenure by which the House of Hanover held the throne, was then supposed somewhat precarious, and those in power would not *risque* the measure. "Attempts, indeed, were made to relieve the Protestant Dissenters from the hardships of the Test Act, both in this (the reign of George the First) and the next reign, and, perhaps, something more ought to have been ventured on those occasions, than the politicians of those times were willing to put to the hazard. What we certainly know is, that these attempts did not miscarry for want of the hearty concurrence of the Princes on the throne."—Preface to the first edition of the Confessional, p. 50.

† In a letter published by Mr. Holden, Chairman of the Committee in 1732, he says, "The cause needs no lie to support it, nor can be advanced by it; if it did, I abhor the maxim of doing evil that good may come of it, and would be far from practising it; but will ever strive to keep in view the honour of religion, the public peace, the welfare of the nation, *the ease of his Majesty's administration, and, in subordination to these*, the interests and rights of Protestant Dissenters." p. 17.

‡ Com. Journ. Vol. XXIII. p. 310.

§ 13 Geo. II. c. 29.

|| Com. Journ. Vol. XXIII. p. 523.



“ far persons acting under certain charters from the Crown, or  
 “ other powers, were obliged to qualify themselves by taking  
 “ and subscribing the several oaths and tests established by the  
 “ several statutes now in force for those purposes.” This bill  
 was never brought in. Its object and history will be found in  
 the note below \*.

In

\* Since the publication of the first edition of this work, the author has been favoured with the following copy of a letter from the late Dr. Avery, to Joseph Offley, Esq; of Norton Hall, in the county of Derby :

“ SIR,

“ Some of our friends in the country have desired to be informed what was the particular alteration or explication with respect to the Test Act, which was proposed towards the close of the last session, and how it came to miscarry. We judged, therefore, that it might not be unacceptable or improper to give the gentlemen, with whom we correspond in several parts of the country, a short and plain account of this matter, which happened in the following manner.

“ When the session was drawing towards a conclusion, there was a bill ordered in to render more effectual a charter which his Majesty had granted, to incorporate certain gentlemen for the better taking care of exposed and deserted children. When this bill was under consideration, a clause was proposed that should exempt all who acted under that charter from the penalties of the Test Act, though they did not receive the Sacrament according to the usage of the church of England, as that act directs. This was opposed as a clause quite unnecessary, because almost all the gentlemen, who had many years acted under charters of a like nature with this, had steadily neglected qualifying according to the direction of that act.

“ The patrons of this bill, nevertheless, thought, that how generally soever this obligation had been overlooked, yet it did, indeed and in truth, lie very strong on all who acted under any royal charter, letters patent, or commission under the great seal ; and, therefore, insisted that this exempting clause should stand a part of their bill ; and so it did, and the bill passed in that form.

“ This alarmed many gentlemen, who had long acted under such charters, without apprehending that they thereby exposed themselves to the very severe penalties of that act. For neither the governors of hospitals, nor the persons concerned in the managing and directing several parts of the public funds, or particular branches of trade, had ever considered themselves hitherto as obliged to sacramental qualifications.

“ To quiet their minds, and to obviate doubts that might arise on this head, there was a bill moved for, to exempt all concerned in public charities from the obligation and penalty of the Test Act ; and an exemption, designed to reach no further than mere charities, seemed likely to have met with little or no opposition.

“ But as soon as this bill was brought in, it was thought fit and reasonable, by some of those who were engaged in bringing it in, to extend the benefit of it to all concerned in the direction or management of the Bank, the East India company, the Russia company, the South Sea company, and the two Assurance offices ; and to this enumeration some gentlemen proposed should be added, the words *and such like* ; and thus far many gentlemen of known and experienced weight in the House seemed inclined to go. But for as much as the enumeration was evidently partial, and very defective, and the additional words proposed, *and such*



In the year 1747\*, an Act passed repealing the old rates upon houses, windows and lights, and imposing new ones; and the *commissioners* for carrying it into execution are exempted from the Test Act; but the *collectors* and *assessors*, not being mentioned, must still receive the Sacrament according to the rites of the church of England.

The greatest acquisitions of the Protestant Dissenters during the reign of George II. were the different Indemnity Acts. By the first of them † persons beyond the seas, admitted to offices, were allowed *four* months after their arrival in *England* to qualify themselves; and afterwards, in 1736 ‡, that time was extended to *six* months, as it now remains.

The Indemnity Act of 1736 mitigates the effect of the Test Act, by giving further time to qualify till the 1st of August in that year; and persons qualifying on or before that day, are indemnified from all offences *up to that day*. The Indemnity Act passed in 1743 § is more comprehensive, and includes the Corporation Act as well as the Test Act. From that period down to the present time, they have *both* been constantly mentioned in the Indemnity Acts, which have passed

*such like* were judged to be of a very ambiguous import, and liable to great uncertainties and misconstruction, this amendment was not generally relished.—As some thought this was going too far, so others thought it was doing very little for the advantage of liberty; and they particularly objected to it, as extending to very few, if any, of our friends in the country. The latter of these therefore proposed, as the most clear, easy, and certain way of giving satisfaction and relief in this case, that the benefit of this act should be extended to all who acted under any royal charters or letters patent; and that all such persons should be declared hereby exempted from the obligation and penalties of the Test Act.—In opposition to this it was suggested, that this would be to exempt all the corporations in England and their officers from an obligation to sacramental qualifying; and this was an affair of too much importance to be thus brought in by the by, and hurried through the House when it was grown thin, at the close of a session; and accordingly the matter was dropped.—But with an expectation left on most people's minds, that it ought to be revived, and would be again taken into consideration the next ensuing session.

“ We hope you will take the account we have above given you, as an instance and proof of our desire to cultivate a correspondence with our friends in the country; and of our readiness to acquaint you with every thing which occurs here, which we apprehend may any way affect the common interest.

“ Signed in the name and by the order of the Committee,

Charter-House Square,

BENJ. AVERY.”

July 12th, 1740.

\* 20 Geo. II. c. 3. sect. 27.

† 9 Geo. II. c. 26. sect. 4.

‡ 2 Geo. II. c. 31. sect. 5.

§ 16 Geo. II. c. 30.

almost

almost annually as matters of course. In 1736, the Legislature seem to have felt anxiety lest the liberty they had taken with the Test Act, by indemnifying offenders, should occasion alarm; for it is expressly provided, that all the powers, &c. given by the Test Act should be in full force as if it had been re-enacted, *except as to the alteration of time made by that Act.*

By the 16 Geo. II\*. c. 30. it is provided, that all persons who have omitted to qualify for offices, shall, by qualifying on or before the 31st of December then next, be recapacitated and indemnified. By the 3d section all the persons included in the Test Act, (except "persons in the household, "or in the service or employment of his Majesty," who are omitted), "shall receive the Sacrament of the Lord's Supper, "according to the usage of the church of England, within "six months after his or their admittance in or receiving their "authority and employment, in some public church, upon "some Lord's day, commonly called Sunday, immediately after "divine service and sermon." And by section the 4th, all and every person or persons aforesaid, that shall neglect or refuse "to receive the Sacrament of the Lord's Supper, *within the "time, and at the places aforesaid, according to the direction of "this Act,*" shall be liable to and incur the penalties and disabilities provided in the Test Act. The alteration made by these clauses is called in the preamble, "An Amendment" of *the Test Act* "by enlarging the time:" But it is so inaccurately penned, that the enacting part is more adapted to create a *new Test*, enforced by the same penalties and disabilities as in the Test Act, than merely to enlarge the time from three months to six.

In the last general Act for Pardon, passed in 1747 †, offences against the Test Act were not excepted out of it, as they had always been before, and of course were pardoned up to that time. This alteration was probably owing to the zealous attachment of the Dissenters to the House of Hanover, which had been singularly displayed in the then late Rebellion. Many of them had been actively employed in raising independent regiments and companies, and had accepted of military commissions in defiance of the horrid penalties of the Test Laws!

The history of public affairs from the year 1740, to the death of George II. is, without taking into consideration the divisions which prevailed among the Dissenters, a sufficient apology for their silence upon the subject of their grievances. Until the dissolution of the Parliament, in which the majority against their application had been so great, they could have no reasonable hopes of success. And for the remainder of this

\* 1743.

† 20 Geo. II. c. 52.

reign, the situation of public affairs gave full occupation to his Majesty and his Ministers. They had to resist the open attacks of the Pretender from abroad, and the secret machinations of his adherents at home; they had to crush a rebellion, and to carry on two wars against the most potent nations of Europe. Public affairs thus circumstanced, the Dissenters adopted a generous line of conduct. Their zealous adherence to the House of Hanover, and their steady attachment to the constitution of their country forbade them to pursue their personal concerns, so long as the existence of the one and the rights of the other were in danger.

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## S E C T. VII.

*In the Reign of George III.*

**O**UR present gracious Monarch George the III<sup>d</sup>. ascended the throne in the year 1760, and from that time an unaccountable torpor has seized the Dissenters. I will neither vindicate their silence upon the subject of their grievances for so long a period, nor attempt to assign the motives of it. The prosperous state of public affairs at his Majesty's accession pointed out the critical moment for renewing their application with success. A King, who "born and educated in this country, gloried in the name of Briton," beginning his reign with the most brilliant successes in war, and giving to his subjects shortly afterwards the blessings of peace, could not fail to attain popularity; he stood deservedly high in the affections of his people; and the government in his hands acquired a stability and strength, the want of which had been a principal obstacle to the success of the Dissenters under his illustrious predecessors. His present Majesty is known to possess favourable dispositions towards those who dissent from the establishment; for in this reign, Nonconformists of several denominations have received by turns emanations of royal favour. *Popery* has been established in Canada; and the Roman Catholics of England, as well as those of Ireland, have been relieved from some incapacities and penalties, of so severe a nature, that every benevolent heart must rejoice in the change. The Ministers of the Protestant Dissenters in England, have been allowed the enjoyment of their toleration upon terms much more enlarged and liberal, than those granted at the Revolution; and the repeal of the Test Act in Ireland has shewn, that the Sacramental Test is not a *necessary* bulwark for the security of an Episcopal church.

Notwithstanding all these favourable appearances, the only alterations made in the Test Laws, since his present Majesty came to the throne, have been *not in favour of*, but *against* the Dissenters—For, through the inattention of their friends in Parliament, the modern Indemnity Acts differ materially from those passed in former reigns. In those Acts it has been observed, that by taking the Sacrament at some future day, all omissions up to *that day* were rectified; but the later Acts only indemnify persons qualifying on or before a certain day, from penalties and incapacities incurred, not prior to that day (as it was in the last reign) but *before the passing of each Act* of Parliament. Nor let this be esteemed a trivial distinction, for in the year 1786, a corporator of the borough of Bridgnorth, lost his office, in consequence of it.

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#### C H A P. IV.

##### *Present State of the Laws respecting the Sacramental Test.*

**H**AVING sketched out the history of the Sacramental Test, to the present time, I shall in a few words state the law *as it now stands*.—The Corporation Act has been *wholly repealed or altered*; and by the 5 Geo. I. c. 6. sect. 3\*, the election of a person to a corporate office, who has not received the Sacrament according to the usage of the church of England, within twelve months preceding such election, does not make the office absolutely void, but *voidable* only, in case he is prosecuted within six months afterwards; but if he continues in office peaceably for six months, his election is as valid as if he had been qualified at first.

By the law of England, if the member of a corporation refuses to take upon himself any corporate office to which he is elected, he is punishable by information or indictment; nor could he before the Toleration Act have excused himself by saying that he was a Dissenter and not qualified to execute it. That would have been to set up his own crime as a defence; for the canon law (confirmed by statute) requires every man to receive the Sacrament, in his parish church, at least once in every year.—This was productive of great hardships to conscientious Dissenters, particularly in those corporate towns, where the *inhabitants* are incorporated, and eligible to offices; as at Leeds and Newark. If a Dissenter had rendered himself

\* See page 27.



obnoxious, it was an easy matter to inflict punishment beyond all penalties, for it was only to elect him into a corporate office; which if he refused to serve, he might be prosecuted for the refusal; and if he served, he might be punished by virtue of the Corporation Act with loss of office, and of the Test Act (which extends to corporation offices) with the disabilities and penalties before mentioned \*. This was the lot of severity and injustice dealt out to Nonconformists while Nonconformity was treated as a crime. The Toleration Act made a considerable alteration in their favour; it not only exempted them from all penalties, but took away every thing criminal in their not conforming to the church of England, and excused them from serving in corporate offices, by allowing them to plead that they were Protestant Dissenters and could not

\* Lord Mansfield, speaking of *these hardships* when the case of Mr. Evans was before the House of Lords, expressed himself in the following happy strain of eloquence:—"What bloodshed and confusion have been occasioned from the reign of Henry IV, when the first penal statutes were enacted, down to the Revolution, in this kingdom, by laws made to force conscience! There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic; than persecution. It is against natural religion, revealed religion, and sound policy."

"Sad experience, and a large mind, taught that great man, the President de Thou, this doctrine: Let any man read the many admirable things, which, though a papist, he hath dared to advance upon the subject, in the dedication of his history to Henry IV. of France, (which I never read without rapture) and he will be fully convinced, not only how cruel, but how impolitic it is to persecute for religious opinions. I am sorry that of late his countrymen have begun to open their eyes, see their error, and adopt his sentiments: I should not have broke my heart, (I hope I may say so without breach of Christian charity) if France had continued to cherish the Jesuits, and to persecute the Huguenots. There was no occasion to revoke the edict of Nantes; the Jesuits needed only to have advised a plan similar to what is contended for in the present case; make a law to render them incapable of offices; make another to punish them (for it is admitted on all hands, that the defendant in the cause before your Lordships is prosecutable for taking the office upon him): if they accept, punish them; if they refuse, punish them: if they say yes, punish them; if they say no, punish them. My Lords, this is a most exquisite dilemma, from which there is no escaping; it is a trap a man cannot get out of; it is as bad persecution as that of Procrustes: if they are too short, stretch them; if they are too long, lop them. Small would have been their consolation to have been gravely told, The edict of Nantes is kept inviolable, you have the full benefit of that Act of Toleration; you may take the Sacrament in your own way with impunity; you are not compelled to go to mass. Was this case but told in the city of London as a proceeding in France, how would they exclaim against the jesuitical distinction! And yet in truth it comes from themselves: The Jesuits never thought of it: when they meant to persecute, their Act of Toleration, the edict of Nantes, was repealed."—Appendix to Furneaux's Letters to Judge Blackstone.

conscientiously conform. This was not, however, so understood till lately ; for Lord Chief Justice Holt, with a majority of the Judges of the Court of King's Bench, was inclined to think, that the Toleration Act only exempted from penalties, but did not remove the crime ; and even in the late case of Mr. Evans, one of the Judges \* declared himself to be of that opinion.

In 1702 it was moved in the House of Commons †, that the Committee on the Occasional Conformity Bill should have power to receive a clause for exempting Dissenters from such offices as could not by law be executed without receiving the Sacrament according to the usage of the church of England. This seems to have been just and equitable ; and by the late decision in the House of Peers, we are authorized to say was no more than the law had done before with respect to offices in corporations : but such was the strength of the High Church party, that the clause was negatived. In the House of Lords this clause was added and sent back ‡ to the Commons ; but after long and violent disputes, as we have before mentioned, between the two Houses, the Bill passed without it, in 1711.

The Dissenters having thus the authority of the Court of King's Bench, and of both Houses of Parliament to contend with, quietly submitted to the persecution and oppression of their enemies. They were nominated to corporate offices, because it was known they could not qualify to execute them ; and bye-laws, inflicting penalties on those who refused to serve, were expressly made to enrich corporations at their expence. The produce of these unjust exactions sufficed, or nearly so §, to build the Mansion-house of the city of London ; and this sumptuous palace, raised out of a persecution unauthorized by law, will for ever be a reproach and shame to the city in which it is erected, and to a country which could permit such injustice to go unpunished.

At length this infamous system of oppression was overthrown. An action was brought by the Chamberlain of London against Allen Evans, Esquire, for the penalty of 600*l.* for refusing to serve the office of Sheriff of the city of London, which he demanded *under a bye-law made about the time the Mansion-house was built* ; but the House of Lords, to which tribunal it was carried in the last resort, determined unanimously, in 1767, that Dissenters, who could not conscientiously take the Sacrament in obedience to the Test Laws, were excused from

\* Mr. Baron Perrott.

† Com. Journ. Vol. XIV. p. 36.

‡ Ibid. p. 76.

§ In 1736, it appears that no less a sum than 20,700*l.* had been raised from fines paid by persons to be excused serving the office of Sheriff. Out of that money it had been resolved to erect the Mansion-house, and the first stone was laid in 1739.

serving corporate offices. Upon that occasion Lord Mansfield immortalized his name as the friend of religious liberty, and asserted with irresistible eloquence and strength of reasoning the rights of mankind. Mr. Evans survived this decision but a week, though the proceedings had lasted some years.

The Test Act has also been altered; and, taking the 16 Geo. II. c. 30. as an enlargement only of the time, it is now required, that persons *resident in Great Britain*\* should, within *six* months after their admittance to any office, or their receiving any authority or employment, take the Sacrament according to the usage of the church of England, in some public church, on some Lord's day, immediately after divine service and sermon; and that persons *beyond sea* at the time of their admittance to any office, or their receiving any authority or employment, should qualify in like manner by the 9 Geo. II. c. 26. sect. 4. within *six* months after their return to England. "Persons in the household, or in the service or employment of his Majesty," who do not fall within the 16 Geo. II. c. 30. (if any such there be) must qualify as originally, within *three* months after they are admitted.

In general, with respect to the prosecution of offences against the Test Act, there is no limitation of time; but by the 5 Geo. I. c. 6. sect. 3. all offences concerning corporate offices must be prosecuted within *six* months after election. And, as all offences against the Test Act were pardoned in 1747 †, such only as have been committed since that time are now open to prosecution.

## C H A P. V.

### *General Observations on the Corporation and Test Acts.*

**T**HAT the Sacramental Test is so absurdly imposed, as to give no security either to church or state, will be shewn hereafter. At present, we shall confine ourselves to *absurdities* of another nature.

\* I have confined the 16 Geo. II. to persons resident in Great Britain; but it requires *all persons* accepting of any office to take the Sacrament *within six months after admission*, in some public church; this must often be impossible as to persons beyond the seas, and is inconsistent with the 9 Geo. II. which gives liberty to persons beyond the seas to qualify *within six months after their return to England*. If my construction is not well founded, and *these Acts are inconsistent with each other*, the consequence is, that the former is repealed, and that under the latter the best servants of the state, fighting its battles and risking their lives for its benefit, are left exposed to the peril of incurring the dreadful penalties inflicted by the Test Act.—See page 31.

† See page 32.

The



The general words of the Corporation Act have been construed, by several determinations of the House of Commons, to comprehend the free or common burgesses of corporations, who had no immediate concern with the government of the place to which they belonged, but only a right to vote in the elections of some corporate officers or of representatives in parliament. But a more liberal construction has taken place in later times, and it is now settled that a free burgess or common freeman need not receive the Sacrament as a qualification to enjoy the privileges annexed to that situation.—So that this absurdity takes place in corporations; that a Protestant Dissenter, who scruples to receive the Sacrament according to the usage of the church of England, is only *partially* incapacitated; he is a good citizen to some purposes, but not to all; he may elect a mayor, but cannot be one; and he may not only vote for a Member of Parliament, but may be chosen to represent a borough in which he could not execute the meanest corporate office.

The Test Act and the Acts founded upon it extend to offices in corporations as well as others, for the expression used is “all persons admitted, &c. into *any* office or offices civil or “military,” or “that shall have command or place of trust “from or under his Majesty, or by his authority, *or by authority derived from him* ;” and it has therefore been doubted, whether the Censors of the College of Physicians, chosen by that body by virtue of a charter from the Crown, were not obliged to take the Sacrament. When that question was before the Court of King’s Bench, Lord Chief Justice Holt (whose name will be mentioned with reverence as long as the law of England shall exist), was of opinion that the Test Act extended to them; and in the year 1740, as we have already seen, it was taken for granted that all persons acting under royal charters were obliged to qualify.

The situation of the Protestant Dissenters, as to their civil rights, is not now so respectable as it has been; and it is time that they should see their danger and rouse from a state of disgraceful apathy. That spirit which has so often and so nobly distinguished their ancestors, still warms their bosoms, and open violence would be resisted and persecution cheerfully endured; but the secret machinations of their enemies escape their notice, though daily operating to the destruction of their civil rights. They are excluded from many situations of trust and profit, which their ancestors were permitted to enjoy, and many new offices have been erected to which they have no access. It would be an almost endless task to enumerate the alterations, which have been made by acts of parliament, royal charters, letters patent, and commissions under the great seal obtained



for private purposes. They cannot have any concern in the direction of the Bank of England, the East India, Russia, or South Sea Companies, or in either of the two Insurance Companies. They can hold no offices in many Hospitals and other charitable institutions. They are sometimes excluded from being vestrymen in their own parishes, and from managing Almshouses; they are not permitted in some places to govern Work-houses, Poor-houses, and Houses of Industry; they cannot be keepers of Mad-houses or Lazarets; and are prohibited in most cases from acting as commissioners or trustees of any sort. Instances of great hardship, arising from this persecuting system, must have fallen within the knowledge of most of my readers.

The Test Act does not include *ecclesiastical* offices. They are protected only by the 1 Geo. 1. c. 13\*. whereby clergymen are required to qualify themselves in such cases by taking the oaths; but they are not obliged to receive the Sacrament, as in the case of civil offices. The consequence of this is curious enough, for no security is given to the church that its own offices shall not be held by Nonconformists, while those with which the church has no concern can be possessed by those only who have received its Sacrament. A country curate may be a bishop upon easier terms than a corporal in the army can become a serjeant; and to be the chancellor or register of a prelate, (who are frequently laymen,) a less strict test is required than to be an ordinary exciseman.

Such offices of inheritance as were existing when the Test Act passed, are expressly excepted; but all created subsequent to that time, or rather subsequent to the first year of the reign of George I†. fall within its general provisions. These offices are transmissible from father to son, and are a species of private property; yet a Dissenter who succeeds to them is obliged to receive the Sacrament. If he cannot conscientiously do it, either from his general dislike of the rites of the church, or because he is not (as he thinks) in a fit state of preparation; or if from malice or caprice he is refused access to the altar; the office is lost. Here too he is in the hands of the Ecclesiastical Courts; for if he be excommunicated, no clergyman will dare to admit him to the Sacrament. Moreover, as the office comes by inheritance, and no entry is necessary to give possession, the penalty may be incurred before he even knows that the office has been vacated.

The words of the statute, "that shall have command or place of trust from or under his Majesty, or by his authority,

\* Burn's Ecclesiastical Law, Vol. III. sub titulo Oaths.

† The 1 Geo. I. c. 13. s. 18. has incidentally extended the exception to all offices of inheritance created *before that act*.

“ or by authority derived from him,” are very comprehensive. What is a place *of trust*? The term imports a place, to the holding of which some *personal trust and confidence* is annexed; perhaps it was used here in contradistinction to an office of *burthen*, such as the statute excepts when it enumerates those of high constables, petty constables, tythingmen, headboroughs, overseers of the poor, churchwardens, surveyors of the highway, or any *like* inferior civil office. By this means burthened offices, such as all men would wish to avoid serving, Protestant Dissenters are enabled to hold. Surely it would have been fair, if they were to be excluded from offices of *trust*, that they should have been relieved from those of *burthen* also! But the members of the church of England thus secure to themselves a monopoly of all those accompanied with trust or profit; and leave the Dissenters to take their turn in those attended with inconvenience and trouble. If they are good citizens to one purpose, why not to another? if they can make good high constables or churchwardens, why may they not make good corporals in the army, or tidewaiters? Yet a Dissenter, without qualifying himself by taking the Sacrament of the church of England, cannot be an exciseman, a custom-house-officer, or a tidewaiter! And the exception of noncommission officers in the *navy*, shews that those of the *army* are within the Act\*.

\* On the 26th of October, 1666†, a committee appointed to receive information of the insolvency of the Popish Priests and Jesuits, and of the increase of Popery, and to consider how the same may be suppressed, &c. reported several resolutions as the foundation of an address to the King. One of them was; “ That the commissaries of the musters be commanded “ and enjoined, upon penalty of losing their places, not to permit any “ officer or *soldier* to be mustered in the service or pay of his Majesty, “ till he or they shall have taken the oaths of supremacy and allegiance “ respectively, and *received the Sacrament of the Lord's Supper* according “ to the laws and usage of the church of England.” On the 28th of February, 1672‡, an address to his Majesty, for suppressing the growth of Popery, was ordered to be drawn up on the subject matter of the address passed at the time the above vote was made; and on the same day the Test Act was ordered to be brought in, and was referred to the same committee. In this address was a clause § formed upon the resolution just cited, exactly the same with respect to officers, but adding, that “ *ever* “ *soldier serving at land*, shall take the said oaths before his first muster, “ and *receive the Sacrament* in such manner before his second muster.”

If it is recollected that this address was preparing at the same time with the Test Act, and by the same committee, and was in truth the foundation of it, it may perhaps be doubted whether that Act was not meant to take in not only all the commission and noncommission officers of the army, but the *common soldiers* also.

† Com. Journ. Vol. VIII. p. 641.

§ Ibid. p. 261.

‡ Ibid. Vol. IX. p. 259.

A vast variety of occupations and offices fall within the provisions of this Act. The gradations are almost infinite between the Lord High Chancellor of Great Britain, and the humble bug-destroyer to his Majesty. The Postmaster General is in a civil office, and *has authority derived from the King*; so that the proprietors of mail-coaches throughout the kingdom, having places of trust under him, might, if the Act was strictly executed, be obliged to receive the Sacrament according to the rites of the church of England. May we not congratulate our country on its wonderful uniformity of religion, when not even a bug can be destroyed within the purlieus of the royal household but by the hallowed fingers of a communicant; nor a post letter conveyed to any part of the kingdom by horses belonging to a Protestant Dissenter?

Further: the Test Act, if carried strictly into execution, would give the members of the church of England a monopoly not only of all civil and military offices, but of many *trades* also; for by several late Acts of Parliament, persons are obliged to take out *licences* from the commissioners of stamps or excise to carry on their ordinary occupations; such for example is the case of all retailers of perfumery, auctioneers, venders of quack medicines, and persons letting out post horses; and these licences, it may be argued, bring these different persons within the Test Act, for they have places of trust under his Majesty, or from those deriving authority from him. This argument is supported by the practice of former times, when the taking the Sacrament according to the usage of the church of England, was actually insisted upon as a previous qualification to obtain *licences to sell ale* \*. Moreover, upon the sale of some wares there is a duty imposed, of which

\* "For pray tell me, when any Dissenter conforms and enters into the church communion, is he ever examined to see whether he does it upon reason and conviction, and such grounds as would become a Christian concerned for religion? If persecution, as is pretended, were for the salvation of men's souls, this would be done, and men not driven to take the Sacrament to keep their places, or to obtain licences to sell ale, (for so low have these holy things been prostituted) who perhaps know nothing of its institution, and considered no other use of it but the securing some poor secular advantage, which without taking of it they should have lost."—*Mr. Locke's Second Letter concerning Toleration*, Locke's Works, Vol. II. p. 360.

In the debate in 1688, for taking away the old oaths of allegiance, &c. Sir Robert Howard declared himself for an act for taking away the Sacramental Test; and Sir Henry Capell said, "as to what relates to the Sacrament, every body knows my education has been for the church of England, and I will live and die with it; but I would have the receiving the Sacrament to qualify for those" (meaning corporate) "offices cease. It was pressed at here by men of great abilities, and good churchmen were against it. Such use was made of it that *people could not sell ale without it*, and that holy thing was profaned." Grey's Debates, Vol. IX. p. 111.



the vendors are made *collectors*, and for which they account with the different boards ; and there is no doubt that *all collectors of taxes* must be qualified according to the Test Act, unless they are specially exempted, as the collectors of the Land Tax always are. How will the advocates for the Sacramental Test defend this application of it ? If they allow that it would be a great hardship for *all* who seek their livelihood by trade to be compelled to take the Sacrament in the church of England, they acknowledge that the complaints of the Dissenters are not totally destitute of foundation. If the qualification in question was rigorously exacted, it might be attended with the ruin of hundreds of families ; and many Protestant Dissenters, of highly respectable situations in life, might be compelled to shut up their shops, or make shipwreck of their consciences.

In the year 1702, when the Occasional Conformity Bill was under the consideration of Parliament, the Lords among other amendments inserted a clause to exempt from the provisions\* of that Act, governors of hospitals, and assistants of corporations, or workhouses for the relief and setting of the poor on work, and for punishing of vagrants and beggars. This clause† related only to *free and voluntary*, and *not endowed* hospitals. The amendment was disagreed to by the Commons, and at a free conference between the two Houses, reasons were adduced by each for not giving up their opinions, and these reasons were afterwards reported by the managers of the Commons to the House. They seem to have been highly offended by the liberal conduct and arguments of the managers of the House of Lords, who were the Lord Steward, the Earl of Peterborough, (Burnet) Bishop of Sarum, Lord Sommers, and Lord Halifax. Bishop Burnet‡ fell more particularly under their displeasure ; for the report states, “ that some of the Lords arguments had been so irregular, as to defend occasional conformity, and that *they were surprized to hear a Prelate speak in defence of such a practice.*”

It seems that the Lords had treated the objections to the above amendment with ridicule ; for the managers reported, that it had been argued, that the disagreeing to the “ clause relating to hospitals and workhouses seems very hard, because it is not to be imagined these men can be hurtful to the government ; *What hurt can there come from Dissenting bread and cheese, or Presbyterian water-gruel ?*”

\* See Chandler's Debates, Vol. III. p. 211, et seq. where the bill and amendments, the reasons of the two Houses, and the report of the conference are preserved. The House of Commons ordered them to be printed.

† Chand. Vol. III. p. 241.

‡ Com. Journ. Vol. XIV. p. 183.



This dread of "Dissenting bread and cheese, and Presbyterian water-gruel," has continued to the present moment. And though the law may not now be strained to the comprehension of *free and voluntary* hospitals, it certainly includes all such as have been assisted by Acts of Parliament. With respect to hospitals, there is, I believe, but one exception, which has been already mentioned\*. Thus, to be a governor or officer in Guy's Hospital †, in that at Bath ‡, or in the Magdalen §, it is necessary to be a communicant; and "Dissenting bread and cheese, and Presbyterian water-gruel" are prohibited. Our legislators most wisely think that, to feed the hungry, to cure the diseased, to reform the profligate, are employments which, in the hands of Protestant Dissenters, might endanger the safety of the established church; while the education of youth, and the power of imprinting upon their tender minds the principles of Nonconformity, may be safely trusted in their hands. The wise men of Gotham would have argued better.

But the absurdities already mentioned are not to be compared to one, which affects the Dissenters more particularly. A certain sum of money is annually given by the King, to a number of their most ancient and respectable ministers and laymen resident in London, to be distributed through the kingdom among the poorer ministers and congregations. This annual gift is well known by the name of *Regium Donum*. Now it will not be denied that the distribution of this money is a personal trust delegated to these Gentlemen, either by the King himself, or by some person acting in authority under him; and being in places of trust, they fall as fully within the Test Laws, as the great officers of state, or the *little* officers just mentioned. I have never yet heard that these Gentlemen have communicated in the church of England within the time limited, and I leave to others to imagine the distress which would be occasioned among these grave and reverend personages, if they were called upon to qualify; or the outcry which would be raised with sensible persons through the kingdom, if they should each be sued for the penalty of 500 *l.* or the dreadful incapacities they have respectively incurred be rigorously enforced.

It has been before observed, that certain offices may be held without taking the Sacrament; but it would puzzle the wisest man to give any good reason why they, and they only, should be thus privileged. If a midshipman in his Majesty's navy is not in a capacity to injure the church or state, so neither is a serjeant in the army. If a Dissenter may be a good com-

\* The Foundling Hospital, see page 29.

† 12 Geo. II. c. 31.

§ 9 Geo. III. c. 31.

‡ 11 Geo. I. c. 12.

missioner for the land-tax, though he scruples to receive the Sacrament, why should he not be qualified for a commissioner in any other department of the revenue? If he may be a collector or assessor of the land-tax, why may he not act in the same capacity as to taxes upon windows? If he may superintend the maintenance and education of foundlings, why may he not have the keeping of lunatics, the feeding of paupers, or the distribution of medicines or alms? If he may provide for the necessities of the poor at Bristol, why should he be prohibited from doing the same at Worcester\*? If a high constable, who, by virtue of his office, can raise the *posse comitatus*, may be trusted without taking the Sacramental Test, why should it be required from a maid of honour, or a rat-killer?—It will not be an easy task to reconcile to reason and common-sense a system of law, whereby a greater security for the civil government and established church is required from the sword-bearer or meanest officer of a petty corporation, than from a member of the House of Commons or a Lord of Parliament.

The horror felt by the House of Commons at the progress of popery was such, that, in framing the Test Act, their only care was to secure the kingdom from its inroads. Occupied solely with that object, they included even the female sex within its provisions. From the mistress of the robes down to the necessary woman no mercy is shewn; all must conform to the solemn ordinance; nor is the royal nursery exempted.—But this is not the only way in which the ladies are affected: for several enjoy pensions from the crown, and to receive the bounty of their sovereign, they must take the Sacrament according to the church of England; for the act extends to “pensions of bounty, and voluntary pensions.” Now, when the terror of popery is passed away, and we consider the act, abstracted from those feelings which agitated and alarmed the framers of it, it is not easy to discover how a widow receiving a pension from the crown can thereby become dangerous to the state; or how the bare existence of a disaffected maid of honour, or bedchamber woman, should put the established church in jeopardy.

No person, says the act, “shall receive any pay, salary, fee, or wages, by any patent or grant from the King,” unless he shall take the Sacrament according to the usage of the church of England! Thus the King is deprived of the power of rewarding the meritorious services of a Protestant Dissenter, even when not in any public office or place of trust, unless he qualifies himself to receive the recompence! After he has executed the commands of his sovereign, he may be told, “you have done well; your country is obliged to you; but the King cannot give you any wages or salary, because you

\* 2 and 3 Anne, c. 8.

“ have not taken the Test within six months after he employed you in the business.” There is an intolerable degree of hardship in such a law; for the Dissenter, holding no office, naturally concludes, that it is unnecessary for him to qualify; and yet that is the condition on which alone he can be entitled to his, perhaps, hard-earned pittance. It is worse than an *ex post facto* law, since the qualification may not become necessary until it is impossible to comply with it; for the six months may be elapsed long before the business is ended or the payment made.

The singular effects of this act upon the subjects of Scotland and Ireland are omitted here, but will be considered in another place.

That the Test Laws are not put in execution, is owing not merely to the intolerable absurdities and hardships which would ensue, but to the liberal spirit of the times; and it may be laid down as a sound maxim in politics, that laws applicable to ordinary cases ought to be repealed when they become dormant—in other words, when the government of a country *dare not*, or from motives of expediency *cannot* put them in execution. The Acts of Indemnity, which pass annually, are now become absolutely necessary for the peace and orderly government of the state, and to save almost the whole nation from penalties and disabilities. Without this annual relaxation of the Test Laws, they must have been repealed long ago. The penalties and disabilities that hang over those who neglect to qualify themselves, far exceed the due proportion they ought to bear to the offences they are meant to punish, and are such as humanity contemplates with horror. By the 4th section of the act, the office is declared void; and by the 5th, if any person neglecting to qualify shall afterwards continue to exercise his office, *he is deprived of the right to sue in any court of law or equity; he cannot be guardian to any child, or administrator or executor to any person; he can neither take a legacy or deed of gift, or bear any office in England, Wales, or Berwick upon Tweed; and he besides forfeits 500l. to any one who shall sue for the same!*

Prosecutions to inflict these disabilities and this penalty are not limited in respect of time; and if the annual Indemnity Acts did not mercifully interfere, a person, whether Conformist or Nonconformist, who had been in office, and neglected to qualify according to law, could never afterwards be safe; for no lapse of time could save him \*, and he might be prosecuted to-day for offences committed forty years ago.

\* All offences committed since the last general Act for Pardon (in 1747) are now open to prosecution. See p. 32 and p. 37.



The penalty for this offence is enormous; for, even among those who have access to the highest offices, 500 *l.* would be a very serious fine; but when applied to the vast number of petty officers who come within this act, it is cruel beyond all bounds.—Upon these the legislature might as well have inflicted imprisonment for life, for it must operate as such. How can a poor exciseman be supposed to raise such a sum? and imprisonment to him is ruin, for his subsistence depends on the wages earned by his personal service. To ninety-nine of the officers within this act out of an hundred, this observation will apply; and is not perpetual imprisonment a punishment somewhat too severe for such an offence?

The immense disparity between the penalty incurred by offences against the Test Act, and that inflicted in the Corporation Act, deserves to be particularly noticed.—In the latter, it is only an avoidance of the office; in the former, it is followed with the destruction of almost every civil right of the offender; so that considering the Acts as unconnected, a Nonconformist runs much less risque in accepting the office of Mayor of a Corporation, than by letting out post-horses. If avoiding the office is the proper standard of punishment, the disabilities inflicted by the Test Act cannot be justified: and this absurdity is allowed to remain in the laws of England, that there are different punishments for the same offence; and that the penalty for holding the highest office in a corporation without receiving the Sacrament, is not so severe as for holding the lowest civil office of any other kind.

Another argument against the severity of the Test Act, arises from the proceedings in parliament respecting the occasional Conformity Bill. The House of Commons, notwithstanding the violence of its leaders against the Dissenters, never proposed a measure of punishment so severe. \* They at first proposed a forfeiture of 100 *l.* and 5 *l.* a day for every day that a person in office should be present at any Dissenting meeting; and on conviction in any action for these penalties, he was to be disabled from holding the office he had possessed, or any other in England, Wales, or Berwick upon Tweed, until he had conformed for the space of one year. This, which is a merciful punishment compared to that we are now considering, the Lords thought *too severe*, reducing the penalty to 20 *l.* only, attended with loss of office; and giving as a reason, “That the Lords do not  
“ take going to a meeting to be *malum in se*, for that the  
“ Dissenters are Protestants, and differ from the church  
“ of England only in some little forms; and therefore

\* Chand. Deb. Vol. III. p. 214.



"the Lords think loss of office a sufficient punishment, without incapacity."

When this \* bill was agitated for the second time between the two Houses, the Commons had reduced the penalty to 50*l.* with the loss of office only; this was still objected to by the Lords, and when at last the bill was passed in 1711 †, the penalty was reduced to 40*l.* with disability to hold any office in England, Wales, and Berwick upon Tweed, only until the party had conformed for the space of one year.

Heavy as was this *civil* disability, it was *all* that was asked for by the enemies of the Dissenters, and this punishment, however grievous, is not to be compared to that inflicted by the Test Act. It is there accompanied with the loss of important Civil Rights; nor is it confined to them, for it deprives an offender of the rights belonging to him, not only as a citizen, but *as a man*. The right of suing, of being executor or administrator, or of taking a legacy or deed of gift, may be derived from his relation to the state; but the right of a father to the care and education of his child, boasts a higher source; it is one of those natural essential rights which no community can destroy or affect; it existed long before any community was formed, and will continue to exist although none should ever be known again among mankind.

Before the severity of this punishment is dismissed from our attention, it ought to be observed, that its more than savage cruelty is much heightened from the rigour with which it may be exacted. Until the 13th Geo. I. no circumstances of alleviation whatever could prevent its being incurred; *neither illness nor absence was any excuse*, even for persons out of the kingdom; and the penalty fell with unremitting severity on the innocent and the guilty. Nor is an omission to receive the Sacrament through mistake or inadvertence, by persons in England, even now treated more mercifully; so that the most steady members of the church may occasionally feel the weight of this penal law. The Commons in their reply to the reasons of the Lords, in the debates on the occasional Conformity Bill, allude to such an instance, when they say, that "a very violent prosecution had been known on the Test Act within these few years, against an Alderman of Worcester, a constant Conformist, *only upon a nicety*, and when there had been *no fault in the party*." Is it not shocking to reflect, that where there has been no fault in the party, but merely *upon a nicety*, a person may be deprived of all his rights

\* Chand. Deb. Vol. III. p. 281.

† 10 Anne, c. 2.

as a citizen, and of those which are still more dear to all men, those of a parent also? But was it not more cruel still, (and yet it was a grievance that existed for many years) that a person at a distance from England, in the service of his country, by being honoured with his majesty's favour, and appointed to an office, might have fallen within the same disabilities; when perhaps it might not have been possible to return to England within the limited time? The inconveniences arising from this state of the law, occasioned the Act of Parliament in favour of Dr. Newton, who happened to be appointed to an office *while abroad in the Queen's service*; and that Act being requisite in his case, shews sufficiently to what terrible lengths these Test Laws might have been carried. This rigour has been abated by several Acts of Parliament; but all the alleviations would prove only an inefficacious remedy for the evil, if the liberal and enlarged spirit of the times did not co-operate to prevent prosecutions. Wonderful is the effect of that spirit! It controuls all laws, and gives, to a certain degree, security and peace where the Legislature holds out strong temptations to prosecute and oppress. A prosecution for an offence against the Test Laws, is unheard of, although offenders may be found in every village, and the law gives a penalty of 500*l.* to the informer! Nay, although even greater advantages are offered to the unprincipled and wicked; for the debtor of an offender, may not only recover the penalty, but also acquit himself of the debt by incapacitating his creditor from suing for it!

## P A R T II.

## C H A P. I.

*Of the Injustice of a Religious Test in general, as a Qualification for Offices.*

**M**AN in a state of nature is possessed of many rights, some of which he gives up entirely, and in others he suffers himself to be controuled when he enters into a civil community. Of the latter sort the right of self-defence is an instance; it is never wholly lost, but is suspended only so long as the good of the public requires, and as the community at large affords protection to the individual. Whenever the danger is so pressing and immediate that no assistance can be derived from the society, the municipal law of all countries, recognizes the revival of natural rights, declares that force may be repelled by force, and that the death of the aggressor shall be justified.—But there are other rights which no man *can* resign, even to a civil society. No man can subject his opinions in religious matters to the magistrate, for he is intrusted by the great Author of his being with the exercise of his mental faculties in this respect; and his conduct in this trust, in a state of society as well as of nature, is merely a personal concern between each individual and the God who made him. The right of private judgment never could be surrendered; and the magistrate ought not to controul it, because it never could be given up to his jurisdiction.—“Conscience is not controulable “by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs\*.” Such was the animated language of the great advocate for the rights of private judgment, who, to the honour of this country, long filled one of the highest offices of the law. It is the duty of every man to make choice of those religious opinions, which, after a full and free investigation, his conscience declares to be right, without regard to the systems and opinions of others, whether mere individuals or persons intrusted with power. The interference of the civil magistrate in matters thus excepted out of his jurisdiction, is a breach of trust, and an unjust perversion of power, virtually delegated for other purposes.

\* See Appendix to Furneaux's Letters, p. 277.

Toleration then is not a matter of favour, which government may withhold or grant at pleasure\*; for if liberty of conscience be a right essential to human nature, it follows of course, that the magistrate is bound to leave the members of the community in this respect free and uncontrouled; and that his duty is to protect each individual in the exercise of this right against all usurpation.—To obtain a competent idea of the rights of mankind in a state of society is not difficult. A political community is the union of a number of individuals, each thinking for himself in matters of religion, for the purpose merely of protecting their persons and property from injury. This is the legitimate object for which political societies are formed†, and whether there ever was in fact an original compact or not, is immaterial, since the rights of the subjects and the duties of the magistrates are in both cases exactly the same.—For directing the public affairs of the society, proper offices must be instituted and competent salaries annexed. To these, as endowed out of the public stock, and as affecting the happiness of all, *all* have an equal right to be admitted, notwithstanding any differences of opinion in religious matters, which affect neither their attachment to the society nor the objects of its institution.

If in process of time it is found, that punishments are insufficient to restrain individuals from injuring one another, preventive measures are resorted to; and the necessity of impressing upon the minds of the people lessons of religion and virtue, naturally introduces the formation of a religious establishment, “as a scheme of instruction‡.” “The authority therefore of a church establishment is founded on its utility;” and assuming the necessity of having *but one* system established,

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\* The Toleration here contended for, is, “*absolute liberty, just and true liberty, equal and impartial liberty*; upon the principle that “neither single persons, nor churches, nor even commonwealths, have “any just title to invade the civil rights and worldly goods of each “other, upon pretence of religion”—not the Toleration supported by Bishop Warburton, and certain modern statesmen and bishops, which pre-supposes the establishment of a national church, and consists only “in an indulgence with respect to separate places of worship, or different modes of discipline, or in allowances of partial and occasional “Conformity.” “An attempt to make a Test Law consistent with “the above only true sense of Toleration,” (says the Author of the Confessional) “may be considered in the same light, as an attempt “to make a thing *heavier than itself*, the want of which secret hath “ruined many a hopeful trial at a *perpetual motion*.” Preface to the first edition of the Confessional, p. 53, 54.

† Even Bishop Warburton admits that, “the genuine end of civil “society, is no other than security to the temporal liberty and property “of man.” Alliance between Church and State, 4th edition, p. 30.

‡ This is the idea of the liberal and enlightened Paley!—“A religious establishment,” says he, “is no part of Christianity, it is only “the means of inculcating it. It cannot be proved that any form of “church government was laid down in the Christian, as had been in “the Jewish scriptures, with a view of fixing a constitution for suc-  
“ceeding



we must allow, that it is the duty of the magistrate to fix upon that which the majority profess\*.

Even in this view of an establishment, however, there is nothing to authorize the infliction of penalties on those who do not believe its doctrines or conform to its discipline. After the magistrate has established that form of religion, of which the majority approve, and has provided for its maintenance, he has done his duty. He ought not further to shew a partiality to any one sect, but ought to take *all* equally under his protection, and guard the inherent right of private judgment from violation.

Instead of being treated as delinquent outcasts, the Dissenters, from an establishment thus formed, have, in one view an increased pretension to indulgence. Forced to contribute money towards the support of the religious opinions of others, they are intitled, if not to compensation, at least to forbearance in return.

"ceeding ages; and which constitution consequently the disciples of Christianity would every where, and at all times, by the very law of their religion, be obliged to adopt."—"The authority therefore of a church establishment is founded on its utility; and whenever upon this principle we deliberate concerning the form, propriety, or comparative excellency of different establishments, the single view under which we ought to consider any one of them is, that "of a scheme of instruction;" the single end we ought to propose by them is "the preservation and communication of religious knowledge." Every other idea and every other end that have been mixed with this (as the making of the church an engine or even an ally of the state; converting it into the means of strengthening or of diffusing influence, or regarding it as a system of regal in opposition to popular forms of government) have served only to debase the institution, and to introduce into it numerous corruptions and abuses." And according to Bishop Warburton, "the true end for which religion is established, is not to provide for the true faith but for *civil utility*." Alliance between Church and State, p. 347.

\* Bishop Warburton tells us, that where there are several religions existing in a state, the state allies itself with the largest; and this, he says, is the reason why the Episcopal is the established church in England, and the Presbyterian the established church in Scotland. The alliance, he admits, becomes void, when the church thus established loses its superiority of extent to any considerable degree, "and a new alliance is of course contracted with the now prevailing church, for the reasons which made the old." Thus in the Roman Empire, the Pagan church gave way to Christianity, and in England the Popish church to the Protestant. See Alliance, 4th edition, p. 284 to 288.—On these principles how would this political bishop have defended the established church of Ireland, where the state is *allied* to a religion of smaller extent than another, which is not even tolerated?

The concession made above in the text, respecting a sole establishment, may be liable to objection; for it may be said, that by an establishment, nothing more is *necessarily* meant, than a support established by law for particular *clergymen*, and not the support of their religious *opinions*, to the exclusion of all other religious opinions. And perhaps it may be thought that the same laws may very safely provide for the legal support of clergymen of different persuasions, all of whom unite in teaching good morals to the public, and particularly to youth.

If this reasoning be just, the whole code of penal laws against Nonconformists was made up of violations of the most sacred rights ; rights over which the state could have no jurisdiction. And civil incapacities, being in the nature of penalties (for exclusion from a right is as much a penalty as the deprivation of what a man has been permitted to enjoy), to inflict them without cause is manifest injustice \*. If I am a good member of the civil society, I stand upon an equal footing with every other member, considered as such ; and it is no offence to government, if I behave with duty and respect to it, that I worship God in a manner somewhat different from my neighbour ; nor is it a sufficient reason for excluding me from all public service and trust.—Incapacities of the nature in question should be inflicted as punishments for crimes against the state ; and Protestant Dissenters ought to be no longer liable to *any punishment*, since, by the laws of England, Nonconformity has ceased to be a crime †.

But, says Bishop Warburton, “ Diversity of sects can do mischief only by getting into the administration ; therefore to keep them out is, for the reasons above, only a restraint : but was their civil incapacity extended further, then it would become a punishment. By the Test Law it is not extended further ; therefore it is no punishment, but a restraint only ‡.

\* So argued Sir Leoline Jenkins in 1680 against the Exclusion Bill. “ To disinherit a Prince,” said he, “ for no other cause but for being of a different opinion in some points of faith, is, I think, quite contrary to the principles of the religion we profess, and also to the established Laws of the Land.” 1 Chand. Deb. 424. All that the Dissenters now assert, is, that to disinherit a subject “ for no other cause,” is equally indefensible.—In another debate on the same bill, this staunch friend of monarchical power expressly said so, “ I think it is contrary to the principles of our religion, that we should dispossess a man of his right, because he differs in point of faith ; for it is not agreed by all that dominion is founded in grace. For my part, I think there is more of Popery in this Bill, than there can possibly be in the nation without it ; for none but Papists and Fifth Monarchy men did ever go about to disinherit men for their religion.” Ibid. 404.—Colonel Legge argued in the same way. Ib. 430.—Do not the modern members of the church of England disinherit men for their religion ?

† This doctrine was recognized by the highest tribunal of justice, in the great case of Mr. Evans. Lord Mansfield said, that “ the case is quite altered since the Act of Toleration. It is now *no crime* for a man, who is within the description of that Act, to say he is a Dissenter ; nor is it any crime for him not to take the Sacrament according to the rites of the church of England : nay, the crime is, if he does it contrary to the dictates of his conscience.” Appendix to Furneaux’s Letters, p. 263. See too the Lords Protest in 1688.

‡ Alliance between Church and State, p. 305.—N. B. Bishop Warburton had before defined punishment to be the infliction of more pain than is necessary to repel an evil. Ibid. 302.

On this reasoning the Bishop defends the exclusion of Protestant Dissenters from civil offices : But according to him, each individual must consult his own conscience, and determine as well as he can, in what cases, and how far mischief is to be apprehended, for on that depends whether the remedy applied is to be denominated a *restraint* or *punishment*. Some then may think that free access to civil offices would give to Protestant Dissenters neither the power nor the inclination to do mischief, and therefore, upon the Bishop's own principles, these must look upon the exclusion as a punishment, because no restraint can be necessary where there is no evil to repel. On the other hand, some may hold that to repel the evil, it is necessary to prohibit Protestant Dissenters from exercising *any* trade (as has been already unjustly done by law in several instances), and they would justify the ruin of the individuals, and the starving of their families, because this was only a restraint. In like manner others still less liberal, might conceive that the enjoyment of any species of property by Dissenters was mischievous. Nay, some may form the notion that the bare existence of a Nonconformist is mischievous, and thus the same principles on which the Bishop is authorized to exclude them from office, would justify more narrow bigots in tying them to the stake and committing them to the flames.

False foundations are naturally accompanied by sophistical inferences; and the Bishop increases this difficulty by not giving us any general standard by which men shall know how far religious opinions, merely as such, are mischievous; or how far their own opinions are better than those of others.—Bishop Hallifax however admits \* that we must go back to the law of nature to determine the different obligations of governors and governed; and upon principles deduced from that law, the Protestant Dissenters insist that no man has a right to meddle with the religious opinions or actions of another, unless they are objectionable in a civil view, and would be inconsistent with the peace of society, supposing no established religion to exist. They claim, as their *right*, to be restored to a capacity of participating with their fellow citizens, in the civil offices of their country, and complain of the persecuting spirit which perverts the powers delegated to a political community for the protection of temporal rights, to the support of a spiritual tyranny over the consciences of its subjects.

Moreover, Bishop Warburton supposes, that, whenever the restraints in question are broken through, they are to be *followed* by punishments; so that their efficacy is made to *depend* upon

\* Bishop of Gloucester's Sermon before the House of Lords, on January 30th, 1788, p. 7.



them.—If nothing more than what is *negative* is intended, it may reasonably be asked, when the conduct of the party shall have been irreproachable during his continuance in office, why he should be punished with such horrid penalties as those of being incapacitated from suing, receiving legacies, being guardian to his own child, &c. since it would be easy to affix due penalties to any *positive* crimes committed in office.—The Bishop may deceive himself and mislead others; but the Dissenters will have good reason to complain of the persecution of the church, so long as they are deprived of the full enjoyment of their natural rights. They are branded as persons not fit to be trusted, and unworthy of having any share in the honours or revenues of the state. And for what are they thus stigmatized and ill treated? for “their religious principles and profession only;” and I know, says Dr. Furneaux, “no other definition of persecution, than that it is an injury inflicted on a person for his religious principles and profession only.”

Bishop Warburton admits that punishment should not be inflicted for a *mischief*; (which he defines to be an evil in which the will is not concerned;) for this would be, according to him, “*absolutely unjust*” and “*altogether impertinent*.” Now the Test Laws are so framed, that some persons not only *may*, but *must* necessarily become offenders against them, without the will being concerned. This was clearly the case formerly as to persons abroad appointed to offices, and not returning to England within the time limited: so it was with regard to all corporate offices till the year 1767, when Mr. Evans’s case was finally determined: and it is so *even now* in the case of offices of inheritance created since the first year of the reign of George the 1st, for a person may actually succeed to one of them, and become possessed, without knowing that his right has accrued: so it is too, where Dissenters have been employed by the King or persons having authority under him, for the public service, but without having any public office; and so perhaps in other cases. Admitting that persons wilfully breaking through the restraints above alluded to, may be properly punished by the penalties and disabilities inflicted in the Test Act, we have the Bishop’s authority to say, that the Test Laws are indefensible in this respect, and that it is *absolutely unjust* and *altogether impertinent*, that those who offend involuntarily against them should be objects of *punishment*.

It is with pleasure that I turn from a Bishop, whose system favours so much more of tyranny than of Christianity, to the respectable Archdeacon Paley whom I have before cited, and whose reasoning on this subject is particularly applicable here.—“Concerning,” says he \*, “the admission of Dissenters from

\* Paley, p. 581.



“ the established religion, to offices and employments in the  
 “ public service, (which is necessary to render toleration com-  
 “ plete) doubts have been entertained with some appearance of  
 “ reason. It is possible that such religious opinions may be  
 “ holden, as are utterly incompatible with the necessary func-  
 “ tions of civil government, and which opinions consequently  
 “ disqualify those who maintain them from exercising any share  
 “ in its administration. There have been enthusiasts, who  
 “ held that Christianity has abolished all distinction of proper-  
 “ ty, and that she enjoins upon her followers a community of  
 “ goods. With what tolerable propriety could one of this  
 “ sect be appointed a judge, or a magistrate, whose office it is  
 “ to decide upon questions of private right, and to protect men  
 “ in the exclusive enjoyment of their property? It would be  
 “ equally absurd to intrust a military command to a Quaker,  
 “ who believes it to be contrary to the Gospel to take up arms.  
 “ This is possible; therefore, it cannot be laid down as an  
 “ universal truth, that religion is not in its nature a cause  
 “ which will justify exclusion from public employments.—  
 “ *When we examine, however, the sects of Christianity, which*  
 “ *actually prevail in the world, we must confess, that, with the*  
 “ *single exception of refusing to bear arms, we find no tenet in*  
 “ *any of them, which incapacitates men for the service of the*  
 “ *state.*—It has indeed been asserted, that discordancy of reli-  
 “ gions, even supposing each religion to be free from any er-  
 “ rors that affect the safety, or the conduct of government,  
 “ is enough to render men unfit to act together in public sta-  
 “ tions. But upon what argument, or upon what experience  
 “ is this assertion founded? *I perceive no reason why men of*  
 “ *different religious persuasions may not sit upon the same bench,*  
 “ *deliberate in the same council, or fight in the same ranks, as*  
 “ *well as men of various or opposite opinions upon any con-*  
 “ *troverted topic of natural philosophy, history, or ethics.*

“ There are two cases in which Test Laws are wont to be  
 “ applied, and in which, if in any, they may be defended.—  
 “ One is, where two or more religions are *contending* for  
 “ establishment; and where there appears no way of putting  
 “ an end to the contest, but by giving to one religion such a  
 “ decided superiority in the legislature and government of the  
 “ country, as to secure it against danger from any other. I  
 “ own that I should assent to this precaution with many scru-  
 “ ples. If the Dissenters from the establishment, become a  
 “ majority of the people, the establishment itself ought to be  
 “ altered or qualified. If there exist amongst the different  
 “ sects of the country such a parity of numbers, interest, and  
 “ power, as to render the preference of one sect to the rest,  
 “ and the choice of that sect, a matter of hazardous success,  
 “ and of doubtful election; some plan *similar to that which*  
 “ is

“ is meditated in North America, and which we have described in a preceding part of the present chapter, may, perhaps, suit better with this divided state of public opinions, than any constitution of a national church whatever.—In all other situations, the establishment will be strong enough to maintain itself. However, if a Test be applicable with justice upon this principle at all, it ought to be applied in regal governments to the chief magistrate himself; whose power might otherwise overthrow, or change the established religion of the country, in opposition to the will and sentiments of the people.

“ The second case of exclusion, and in which I think the measure is more easily vindicated, is that of a country in which some disaffection to the subsisting government happens to be connected with certain religious distinctions. The state undoubtedly has a right to refuse its power and its confidence to those who seek its destruction. Wherefore, if the generality of any religious sect entertain dispositions hostile to the constitution, and if government *have no other way* of knowing its enemies than by the religion they profess, the professors of that religion may justly be excluded from offices of trust and authority.—But even *here* it should be observed, that it is not against the religion that government shuts its doors, but against those political principles, which, however independent they may be of any article of religious faith, the members of that communion are found in fact to hold.”

This elegant and popular author has argued from principles approaching too nearly, perhaps, to those of Bishop Warburton: but his deductions, as far as the present subject is concerned, are directly the reverse of the Bishop's; for the result is\*, “ That a comprehensive national religion, guarded by a few articles of peace and conformity, together with a legal permission for the clergy of that religion, and a *complete* toleration† of all Dissenters from the established church, without any other limitation or exception, than what arises from the conjunction of dangerous political dispositions with certain religious tenets; appears to be not only the most just and liberal, but *the wisest and safest system* which a state can adopt; inasmuch as it unites the several perfections which a religious constitution ought to aim at;—liberty of conscience, with means of instruction; the progress of truth, with the peace of society; the right of private judgment, with the care of the public safety.”

\* Paley, page 586.

† He has before stated the admission of Dissenters to public employments, as necessary to make a Toleration *complete*.

## C H A P. II.

*Of the Injustice of a Test, excluding Protestant Dissenters from Offices.*

THE Dissenters of the present day do not contend for establishment, nor is disaffection to the subsisting government in the least connected with any of the religious distinctions among them. Whether the Test is defended as a security to church or state, they may assert their right to be restored to the rank of citizens, for they hold opinions hostile to neither.—With respect to their sentiments on civil government, they are precisely the same as the members of the church of England are understood to profess. They are the friends of civil liberty; they assert the principles on which the glorious Revolution was founded, and which placed the House of Hanover on the throne. The charge of disaffection to the present government is inconsistent with these principles, and unsupported by any part of their conduct. They have run greater risks, and with greater unanimity, to establish and preserve it, than any other set of men whatever. During the reign of Charles the Second, the small remains of liberty in England were chiefly preserved and cherished by them. They resisted, with effect, the arbitrary designs of Charles, and his unfortunate brother, when their own immediate interest would have led them to unconditional submission; they joined cordially in the Revolution; and exposed themselves to the resentment of a bigotted prince, and an infatuated people, to secure the accession of the House of Hanover. This, and more they generously did, without making any terms for themselves. The unkind returns they met with never diminished their attachment to that family, nor damped their ardour in the cause of liberty. In two rebellions the Dissenters, without the exception of a single individual, shewed a steady attachment to the present government; while within the pale of the church were found the zealous champions of passive obedience and the Stuart race.—Against facts so notorious, the Dissenters cannot be accused of disaffection to the present government.

In the reasons framed by the Lords\*, for the dispute on the occasional Conformity bill, (which it must be observed subsisted eighty-six years ago) they say, "*The Lords think, that an Englishman cannot be reduced to a more unhappy condition, than to be put by law under an incapacity of serving his prince and country; and therefore nothing but a crime of*

\* 3 Chand. Deb. p. 220, 225.



“ *the most detestable nature, ought to put him under such a disability.* They who think the being present at a meeting to be so high a crime, can hardly think that a toleration of such meetings ought to continue long; and yet the bill says, the Act of Toleration ought to be kept inviolable.”—To which the Commons answer, “ *That he is indeed reduced to a very unhappy condition who is made incapable of serving his prince and country: but in the present case, our prince and country would be in a more unhappy condition, to be served by such whose principles are inconsistent with the good and welfare of our establishment.*” So that here the two branches of the legislature, disputing with each other on other points, agree in this, that “ *he is indeed reduced to a very unhappy condition, who is made incapable of serving his prince and country;*” and the reason given by the Commons in justification of their severity against the Dissenters is, not that they held *political* opinions dangerous to the *state*, but because they are “ *such, whose principles are inconsistent with the good and welfare of the establishment.*”

It is not easy to conceive, how the Dissenters can be said to hold principles inconsistent with the welfare of the established church, yet the defence of the Test Laws is even now rested upon their being a weapon of defence to guard the establishment from “ *the attacks of those, who are prepared to catch at every opportunity to do it harm\*.*” Do protestant Dissenters catch at every opportunity to do harm to the establishment? The right reverend prelate seems to be as little acquainted with the history of his own country, as with the true spirit of Christianity.—During the tyrannical reign of Charles the Second, a considerable body of Dissenters hoped for a comprehension; but even then they never entertained a thought of destroying the national church, or of establishing themselves on its ruins. They had given up all hopes of monopolizing ecclesiastical power at the Restoration, and only asked afterwards for an equal participation and less severe terms of conformity. One effort was made for that purpose after the Revolution; but the Toleration Act put a final end to all further expectations, and, under the protection of that law, the Dissenters have, for nearly one hundred years, quietly submitted to a total separation from the church.

Since the Revolution, a great change has taken place in their opinions, with regard to the doctrines and discipline of the church; and there is not now among them a single person, who either wishes for a comprehension, or believes it to be practicable.—Persecution and oppression, are the

\* So says Bishop Halifax in his sermon, p. 16.



most successful means for keeping up the zeal and numbers of sectaries; and since the Dissenters have been allowed the peaceable exercise of their religion, their numbers have much diminished; so that taking them now as one aggregate body, the Episcopalians form so large a majority, that their *right* to be the established church will not, upon the principles before laid down, be disputed.—The Dissenters of the present day do not consider a system of religion, of which bishops make a part, to be therefore sinful; but, believing with the members of the establishment, that Christ has not imposed upon his followers any specific form of church discipline\*, they leave to the civil government of the country and the majority of their fellow-citizens to determine to which the preference shall be given†. The present Bishop of Gloucester, therefore, may in perfect security put up his *weapon of defence*: he needs no guard against the attacks of those who have no inclination to do harm. Let him enjoy in perfect security and peace his own situation, but let him not become an advocate for persecution, or a traducer of the oppressed.

\* This opinion is confirmed in its fullest extent, by a review of the several dominions of Great Britain, in different parts of which Popery and two *true* Protestant religions are established. The expression *true*, indeed, applied to the established religion of Scotland in the Act passed in the Parliament of that kingdom for its security, and made one of the fundamental articles of the Union, gave offence to some English Lords; and on the third reading of the bill for the Union between England and Scotland, a rider was offered in these words †. “Provided always, that nothing in this ratification shall be construed to extend to an approbation, or acknowledgment of the *truth* of the Presbyterian way of worship; or allowing the religion of the church of Scotland to be what it is styled, the *true* Protestant religion.” But the motion that it should be read a second time, was negatived, 55 to 19; and the church of Scotland is now, by Act of Parliament, the *true* Protestant religion as well as the church of England. This was a great stretch of Christian charity, for till then the Presbyterian religion had never been acknowledged by the church of England to be a true religion. There was a time, and a very late one too before that vote, when each of these churches arrogated to itself a divine origin, and in consequence of that ridiculous claim would have persecuted the other. The divine right of Kings and Bishops fell together at the Revolution, yet in 1702 the lower House of Convocation voted that episcopacy was of divine and apostolical right; and Bishop Halifax, *even now*, intimates, that it has “*some* claims to be originally derived from apostolical appointment.”—See his Sermon, p. 9.

† These principles, which are now prevalent among the Dissenters, render apprehensions of their hostile disposition ridiculous. They do not wish to supplant the establishment, whose right to pre-eminence they do not dispute, and in whose stead they have no form of church discipline to set up.

The experience of more than one hundred and twenty years has sufficiently shewn, that in the opinions of the Dissenters there is nothing dangerous to the established church. Their exertions preserved that church in the reign of Charles the Second, and they were instrumental in bringing about the Revolution, when its destruction was nearly accomplished. And let it not be forgotten, that at the conclusion of the reign of Queen Anne, they strenuously opposed the intrigues of the Court, to give its supremacy to a Popish prince, in exclusion of the House of Brunswick.—Are the persons who gave up their own interest to secure the national church, to be suspected of designs to destroy it? and can that church need a weapon of defence against such Dissenters? against Dissenters, who for upwards of a century have rendered it every assistance in their power, and preserved it more than once from ruin?

The entire extinction of the sect of Presbyterians in England, who are now become Independents as to church government, and the strictness with which multitudes of the Dissenters adhere to the doctrines of the church, as stated in the Thirty-nine Articles, (a strictness far exceeding that with which they are accepted in general by the clergy) these two circumstances, I say, may serve to compose the apprehensions of the clergy as to any danger from acceding to the present claims of the Dissenting laity.

But there is another style of argument on this subject, even yet more convincing than the foregoing, drawn from the conduct of the Protestant Dissenters settled in the different parts of America. After the power of England ceased in that country, they have shewn in the Northern and Middle Colonies, that they have been falsely accused of objections to the introduction of Bishops. Those states which most wanted Bishops, from having the episcopalian system prevalent among them, namely, the more Southern Colonies, are precisely those which have been most backward in procuring the establishment of Bishops.—The states most filled with Dissenters are the states also among them which have been most liberal respecting Test Laws, which, it must be observed, are confined in general (where they exist) to persons seated in the legislature, and do not extend to inferior officers, one or two states excepted.—The declaration of the state of Virginia respecting religious liberty is a masterpiece, deserving record in letters of gold. And the 6th article of the plan of the new constitution for the United States in America, made in 1787, provides, “that no religious Test shall ever be required as a qualification to any office or public trust under the United States.”

It is true, that some of the Dissenters in North America were formerly intolerant; but Dr. Franklin, in a letter written in 1772, expressly to favour the application of the Dissent-  
ing

ing ministers for relief from subscription to religious articles, has given the *explanation*, which it is impossible to avoid reciting here.—“If we look back” (says he\*) “into history for the character of the present sects in Christianity, we shall find few that have not, in their turns, been persecutors and complainers of persecution. The primitive Christians thought persecution extremely wrong in the Pagans, but practised it one on another. The first Protestants of the church of England blamed persecution in the Romish church, but practised it against the Puritans: these found it wrong in the Bishops, but fell into the same practice both in Old and New England.—To *account* for this we should remember, that the doctrine of toleration was not then *known*, or had not prevailed in the world. Persecution was therefore not so much the fault of the sect, as of the times. It was not in those days deemed wrong in *itself*; the general opinion was only, that those who are in error ought not to persecute the truth; but the possessors of truth were in the right to persecute error, in order to destroy it. Thus every sect believing itself possessed of all truth, and that every tenet differing from theirs was error, conceived that when the power was in their hands, persecution was a duty required of them by that God whom they supposed to be offended with heresy.—By degrees, more moderate and more *modest* sentiments have taken place in the Christian world; and among Protestants particularly, all disclaim persecution, none vindicate, and few practise it. We should then cease to reproach each other with what was done by our ancestors, but judge of the present character of sects and churches by their *present conduct* only.

“Now to determine on the justice of this charge against the *present* Dissenters, particularly those in America, let us consider the following facts. They went from England to establish a new country for themselves at their own expence, where they might enjoy the free exercise of religion in their own way. When they had purchased the territory of the natives, they granted the lands out in townships; requiring for it neither purchase-money nor quit-rent, but this condition only to be complied with; that the freeholders should support a gospel-minister (meaning probably one of the then governing sects) and a free-school within the township. \* \* \* But in process of time \* \* \* some turning to the church of England, \* \* \* objections were made to the payment of a tax appropriated to the support of a church they disapproved and had forsaken. The ci-

\* Political, Miscellaneous, and Philosophical Pieces, by Dr. Franklin, page 74, &c.



“ vil magistrates, however, continued for a time to collect and  
 “ apply the tax, according to the original laws which re-  
 “ mained in force; and they did it the more freely, as thinking  
 “ it just and equitable that the holders of lands should pay  
 “ what was contracted to be paid when they were granted,  
 “ as the only consideration for the grant. \* \* \* But the  
 “ practice being clamoured against by the Episcopalians as  
 “ persecution, the Legislature of Massachusetts Bay, near  
 “ thirty years since, passed an Act for their relief; requir-  
 “ ing indeed the tax to be paid as usual, but directing that  
 “ the several sums levied from members of the church  
 “ of England, should be paid over to the minister of that  
 “ church with whom such members usually attended divine  
 “ worship; which minister had power given him to receive,  
 “ and on occasion to, *recover the same by law.* \* \* \*

“ And now let us see how this persecution account stands  
 “ between the parties.

“ In *New England*, where the  
 “ legislative bodies are almost to a  
 “ man Dissenters from the church  
 “ of England,

“ 1. There is no Test to prevent  
 “ churchmen holding offices.

“ 2. The sons of churchmen  
 “ have the full benefit of the univer-  
 “ sities.

“ 3. The taxes for support of  
 “ public worship, when paid by  
 “ churchmen, are given to the  
 “ Episcopal Minister.

In *Old England*,

1. Dissenters are excluded from  
 all offices of profit and honour.

2. The benefits of education in  
 the universities are appropriated to  
 the sons of churchmen.

3. The clergy of the Dissenters  
 receive none of the tythes paid by  
 their people, who must be at the ad-  
 ditional charge of maintaining their  
 own separate worship.”

The Northern States, it must be added, are very rigid; but  
 in what? not in enforcing belief, or contribution, or sub-  
 mission, to any established sect; but in carrying into strict  
 execution all laws for due observance of the sabbath, and  
 against profane swearing, &c. which, as every Justice of  
 Peace knows, make part of the laws of this country, though  
 certainly very little enforced. These measures do not go  
 to prohibit this or the other sect; but rather to second the  
 endeavours of its ministers for the propagation of each.  
 Accordingly we find, in the late Declaration of Rights  
 which formed the foundation of the new Massachusetts's con-  
 stitution: “ That in this state *every* denomination of Chris-  
 “ tians, demeaning themselves peaceably and as good sub-  
 “ jects of the commonwealth, shall be *equally* under the  
 “ protection of the law; and no subordination of one sect  
 “ to another shall *ever* be established by law.”

Certain



Certain it is, that no countries under the sun, shew more indulgences to variety in religious opinions than the United States of North America; and since so large a majority of their citizens are Dissenters, nothing can be more clear than that the modern disposition of Dissenters, as Dissenters, is not intolerant.

It remains therefore for the clergy to decide, as far as respects their influence and exertions, whether or not they will accede to the request of the Dissenting Laity upon the present occasion. By acceding, they see how little risque they run. By not acceding, they will have one difficulty more to contend with, in the situation into which they are brought, by their own decline in strict manners and official diligence on the one side, and by the change of opinion and of disposition in the laity of all descriptions and sects on the other. The Dissenters are not perhaps an important body in themselves; but as furnishing a *measure*, by which to judge of the Christian spirit of the clergy, their case may in the event produce an impression upon the minds of *others*, who are not Dissenters.—There are two ways of treating difficulties of this sort: the one is, of resisting every change, which is in other words, a *trial of strength*; the other is, of giving way and compounding upon some points, that the call for strength being thus made less, there may be sufficient for supporting the remaining points. The public opinion is changing fast on many subjects; and shall the clergy wait till things accumulate, or redress so much, as to make people *contented* under what remains; shall they open sluices to carry off a part of the approaching tide, or oppose the dam of ancient prejudices to stem the whole?—The question respects themselves, more than the Dissenters or the public; for who have most at stake?—This is not the language of intolerance, but of friendship, good order, tranquillity; and religion.

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### C H A P. III.

*Of the Injustice of a Test excluding the Natives of Scotland from the Offices of England and Great Britain.*

**B**Y the Act of Union the Test Laws were not repealed. There is no Sacramental Test, however, in Scotland, as there is in England: whence this palpable injustice follows, that a member of the church of England has full and free ac-

cess to all the offices of Scotland ; while a member of the kirk of Scotland is incapacitated from holding one in England, unless he takes the Sacrament according to the rites of her established church.—The same national injustice now exists with regard to Ireland, for there is no religious test in that country.

But the hardship and injustice of the Test Laws go far beyond this with respect to the Scottish nation.—By the Act of Union the kingdoms of England and Scotland are incorporated into one, under the name of the kingdom of Great-Britain ; and from that time there is to be only one parliament, one privy council, one army, and one navy for both countries. As the Test Laws do not extend to the parliament, that is out of the question here ; but *every* privy counsellor, and *every* officer in the army and navy, is obliged to qualify in *England* to hold his office. In other words, a Scotchman to be of the privy council of his own country, or to have a commission in the army or navy of Scotland, is obliged to receive the Sacrament in a foreign church. This is the only instance in ancient or modern history of the exclusion of a free people from *their own* offices !—If a Sacramental Test is really *necessary* for the security of an established religion, the kirk of Scotland is singularly unfortunate, since for holding the offices of Scotland none is required ; and for holding those which it has in partnership with England, conformity to *another* church is necessary. When one contemplates the list of the army and navy, and the vast number of natives of North Britain who deservedly fill the most exalted stations, it is matter of astonishment that a high-spirited nation should have submitted to such a degradation, and should have permitted fourscore years to elapse without a single effort to remove it ! The established religion in Scotland has severely suffered by this mode of making converts, which has been working insidiously for so long a time, upon most of the families of consideration and opulence\* ; and which, operating with other causes, may finally sap and destroy it.

But how will the advocates for the Sacramental Test, (still admitting its necessity for security of the establishment, and arguing from their own principles) justify the claim of the King of England to hold the crown of Scotland ; for if it be

\* Most of the nobility and gentry of Scotland are Conformists to the established church when they come into England. Not many years ago they were not ashamed to frequent the Presbyterian chapels, and many people remember the Meeting-house in the Old Jewry, almost crowded with them ; but at this time *not one* is seen there ! In the year 1718, the repeal of the Occasional Conformity and Schism Bills was carried by 41 votes only, 31 Scotch members voting in that majority. In 1787, only 7 Scotch members appear to have voted for the repeal of the Corporation and Test Acts !

necessary for the other officers of the state to be Conformists, ought not the chief magistrate \* to be so too? That the Test should be required from the chief magistrate, seems *peculiarly* necessary for the security of the church of a smaller state, when united to a larger; more particularly when he is resident in the larger state, and is a Conformist to its church. To *him*, if it is applicable with justice at all, it ought to be applied; for his power must be always dangerous to the established religion of the weaker country.—In this respect, again, Scotland is most unfortunate. That country can *never* have a Sovereign of its own religion! for by the Act of Succession †, the King of Great-Britain is required, as the condition on which he holds the throne, to join in communion with the church of England. So that if he was to visit his northern dominions, he must either be an *occasional Conformist*, or an *episcopal Dissenter* there; for his religion is settled by Act of Parliament.—The perfect safety of the established church of Scotland, although its head is of a different religion and resident in another country, although he presents to vacant Presbyterian livings; and although he fills up all the offices of state, without any Test of the religious principles of those whom he appoints; is a strong proof, that such a Test is not *absolutely necessary* to the existence of an establishment.

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#### C H A P. IV.

*Of the Injustice and Hardships arising to the Clergy and Communicants of the Church of England, from the Test Laws.*

THE Sacrament of the Lord's Supper is a matter of a purely religious nature; and the clergy of the established church are so strictly bound, both by temporal and ecclesiastical laws, not to administer it indiscriminately to all who offer themselves at the altar, that the requiring it to be received as a *general* qualification for admission to offices is highly unreasonable and unjust. If offices were given only to persons described by those laws as in a state of fitness to receive the Sacrament, *this* difficulty could not occur; but if in fact, persons are sometimes selected, who must, if they receive it at all, receive it unworthily ‡, (and so, according to the faith of the

\* See what Archdeacon Paley says on this subject, in the passage cited in p. 56.

† 12 and 13 Will. III. c. 2. s. 3.

‡ The 25th Article of the church says, "Sacraments ordained of Christ be not only badges or tokens of Christian men's profession, but



the church, purchase to themselves damnation); or if a Minister, in obedience to the laws of his church, sanctioned by the state, is bound to refuse the Sacrament, manifest injustice must ensue. It is partial and unjust, on the one hand, to exact that as a qualification from *all*, which *all* cannot, if they would, or at least without disproportioned risque, comply with; or, on the other hand, to require the general indiscriminate administration of a religious ordinance from men, who are bound by the solemn ties of duty to administer it only to those selected by the laws. How, we may ask, is this consistent with the boasted alliance between church and state? The law of the church excludes many descriptions of persons, while the law of the state requires *all* to be admitted without distinction.

The receiving of the Sacrament must be *according to the rites* of the church of England; and by those rites the Ministers are required to refuse it to persons of various descriptions; among others, to those not confirmed, or not ready or desirous to be so; to persons belonging to another parish; to those who have done any wrong by word or deed, so that the congregation be thereby offended; to those between whom the Minister perceives hatred and malice to reign; and by the canons of 1603\*, to those who offend their brethren either by adultery, whoredom, incest, or drunkenness; or by swearing, ribaldry, usury, or any other uncleanness or wickedness of life; and this inhibition extends to those who are common and notorious depravers of the Book of Common Prayer, or of any thing contained in the thirty-nine Articles, or of any thing contained in the book of ordering Priests and Bishops, and to those who have depraved his Majesty's authority in causes ecclesiastical.

"rather they be *certain sure witnesses and effectual signs of grace and God's will towards us*, by the which he doth work invisibly in us; and doth not only quicken, but also strengthen and confirm our faith in him." If the Article stopped here, those who are forced to qualify to hold offices or to escape penalties, might be thankful to a church which gives indiscriminately these *sure witnesses and effectual signs of grace and God's will towards us*, to the good and the wicked; but at the conclusion we are told, that "in such only as worthily receive the same, they have a wholesome effect or operation; but *they that receive them unworthily purchase to themselves damnation*, as St. Paul saith." This is explained by the Rubric, which tells us, that if we receive the Sacrament unworthily, "we are guilty of the body and blood of Christ our Saviour; we eat and drink our own damnation, not considering the Lord's body; we kindle God's wrath against us; we provoke him to plague us with divers diseases and sundry kinds of death."

\* I separate those offences which exclude from the Communion under the Canons of 1603, because, having never been confirmed by Act of Parliament, they do not bind the laity; but this clashing of jurisdictions makes it still harder upon the poor clergyman, who is bound to obey the Ecclesiastical Canons.



To this long list must be added persons *excommunicated*\*; and when it is considered for how small a matter this punishment may be inflicted †, it will be found a dreadful engine of church power, and even of civil malice. It may be incurred by obstinacy ‡ or disobedience in not appearing upon a citation, or not submitting to penance or other injunctions of the lowest Ecclesiastical Court; those also are excommunicated who even receive the Sacrament with persons in that situation, or who shall knowingly give it to any stranger excommunicate. These are causes which may affect even the most regular churchmen;—but before the Toleration Act, when Nonconformity was a crime, there were other circumstances more peculiarly grievous to Protestant Dissenters; for this censure fell upon persons refusing to frequent divine service established by public authority in the realm of England; and by the canons of 1603 §, whosoever should separate themselves from the *Communion of Saints*, as is approved by the Apostles rules in the church of England, and join together in a new brotherhood, accounting the Conformists to the church profane and not meet for them to join with in Christian profession, was excommunicated *ipso facto*.

Now let us suppose that a good churchman, for some of the above trifling matters, (the chief of which have nothing to do with civil loyalty, or even religious faith) is excommunicated, and is then appointed to some lucrative office; or which is stronger still, suppose he obtains the office, and is excommunicated within six months afterwards, but before he has received the Sacrament; no clergyman can administer it to him, without incurring the penalty of excommunication himself; and by not receiving it, the party risques the penalty of

\* “Excommunication for doctrines and matters of opinion, even when authorized by the state, must still, (the state having nothing to do with the care of souls, or the church with the care of bodies) as before the Union, be free from civil censures or inconveniences; other than accidentally befall the expelled person from a Test Law in those states where the protection of the church and the peace of the state require its assistance.”—Alliance between Church and State, p. 200.—What is the Bishop’s definition of an *accident*? Can that be said to be *accidentally* the consequence of an Act, which uniformly, nay necessarily attends it? And does not the Bishop here give judgment against the Test Laws?

† Lionel Copley, Esquire, was excommunicated in the Archdeacon’s Court, in 1664, for not receiving the Sacrament in his own parish church, although he shewed he had received it elsewhere.

Women are within the Test Act, and one was excommunicated in the time of James I. for coming to church to be churched without being covered with a white veil.

‡ Burn’s Ecc. Law, Vol. II. p. 211, &c. § Gib. Cod. Vol. I. p. 601.—Is it no grievance to Nonconformists, that after having been excommunicated they cannot remove the very serious civil disabilities which ensue, without reconciling themselves to a church from which they had separated, and giving security to obey its commands?

500*l.* and the disabilities mentioned in the Test Act, or becomes liable to a prosecution for not performing the duties of his office.

Sir John Read, who does not appear to have been a Dissenter, on the 1st of April, 1671, was, by sentence in the Spiritual Court, divorced a *Mensa & Thoro*, and for non-payment of alimony was excommunicated; the Test Act was passed in the interim, and being afterwards made High Sheriff of Hertfordshire, and still under sentence of excommunication, and so not in a capacity to receive the Sacrament, he took upon him the office, and executed it for three months, and then refused (in order to secure himself from the penalty and disabilities) to serve any longer. The Judges came soon after to hold the assizes at Hertford, but there was no Sheriff to attend them; upon which he was prosecuted for not accepting the office, and fined 500*l.*

Assuming then that a clergyman would be justified in refusing to administer the Sacrament to a person excommunicated, the situation of some Nonconformists must have been singular enough before the Toleration Act. If a Dissenter who had separated himself from the church, and joined in a new brotherhood, had been appointed to an office, he was incapable of qualifying himself; because, being *ipso facto* excommunicated, no Minister would dare to admit him to communion. So that he could not avoid incurring the penalties of the Test Act, if he accepted, for he could not comply with its directions; and was liable to prosecution if he refused. Thus additional inducements were held out to those who would reconcile themselves to the church, and a vast increase of penalties menaced the refractory.

Here contemplating the system of church discipline established in England, the man of speculation would be ready to exclaim, Happy people, united in opinion, among whom a virtuous life alone is an introduction to the honourable distinctions and offices of the state! If perfection can be found on earth, surely on this blest spot it must have fixed its habitation! He would be further confirmed in this opinion, by observing the strictness which pervades our laws, by which a foreigner, to become a subject of Britain, must take the Sacrament according to the rites of the church of England\*. If he is not in the state of purity and perfection required by the ecclesiastical laws from all communicants, he is not worthy

\* This is required in order to naturalization by the statute 7 Jac. c. 2. Several attempts have been made in vain to repeal this absurd law; it was repealed for about three years in Queen Anne's reign, but the cry of *the danger of the church*, obliged the Legislature to re-enact it. It was dispensed with in the year 1705, when the Princess Sophia, Electress of Hanover, and the issue of her body were naturalized.

to be ranked among the immaculate inhabitants of England, nor even *with the Presbyterians of Scotland*; for to be naturalized as a Scotchman, he must join in communion with the established church of her sister kingdom.—But the man who gives up theory for fact, and trusts to speculation only when practical observation and experience are wanting, would tell us, that in corrupt times we are not to look for a purity unknown even to the golden age. He would tell us, that from the temporal and spiritual jurisdictions being at variance, all virtue is likely to be lost among us; that even the clergy, not daring to put in execution the laws which they are bound by the most solemn engagements to enforce, assist daily in the profanation of the most holy ordinance of their religion; and that open profligacy and infidelity, in defiance of the anathemas of the church, stalk proudly to the altar, and triumph in the enjoyment of the highest honours and offices of the state.

Many causes of exclusion from the communion rest in the discretion of the minister, and it is not probable therefore that they would be often insisted upon. A sense of duty might impel him on the one hand; but self-interest, and a desire to live in peace with his neighbours, would be more powerful incentives on the other. Besides, the temporal courts have more than once intimated an opinion, that an action would lie against a minister, who should deny the Sacrament to any person, however profligate, or in other respects objectionable, that requested it.—The case of excommunication (which does not depend on the discretion of the minister,) may be an exception; for in Sir John Read's case, it was assumed, that he was not in a capacity to receive the Sacrament\*. In this latter instance then, the civil rights of the subject are absolutely surrendered to the ecclesiastical jurisdiction; but in all others, the clergy are in a pitiable condition. A pious man, feeling exquisitely for the interests of religion, is obliged, under the peril of a suit at law, which may bring ruin upon himself and family, to administer the Sacrament without reserve to the most profligate unbelievers, and to wretches whose lives are a scandal to human nature; at the same time that he is solemnly bound, by the ties of duty and office, to exclude them from the altar, and runs the risk of a prosecution in the Spiritual Courts for admitting them.

Against a system so unjust and so mischievous, so absurd and so severe, the mind of every honest man must revolt; and the Protestant Dissenters would have presumed, if experience had not evinced the contrary, that the reverend clergy of the church of England would have eagerly embraced every opportunity of freeing themselves from the charge of double-dealing, and of

\* Excommunicated persons are not only excluded from the communion, but by the 85th canon, the churchwardens and questmen are directed to see that they *be kept out of the church*.



restoring to its primitive use and original dignity, the holy ordinance of their religion, now left to daily profanation \*. There are some among them who feel a generous anxiety for the true interests of religion, and have long lamented that this scandal should rest upon it; but there are others who consider their church as a state engine, and an *ally* to the civil government, and who lie under the imputation of corruptly preferring the temporal to the spiritual interests of its members; and of sacrificing the interests of religion to secure an unjust monopoly of civil offices to their followers.

## C H A P. V.

### *Repealing the Test Laws not dangerous to Church or State.*

THE modern Dissenters entertain no opinions hostile to church or state, and therefore their free and unrestrained admission to offices could not be productive of danger; but supposing them, against the fact, to be the declared enemies of both, the Sacramental Test, particularly *as now imposed*, affords no real security against them, or any other enemies of the public.

The bare act of receiving the Sacrament can give no security to the church, for it is not a mark of affection to its rites: It implies no engagement not to alter its form or discipline: It is no proof of conformity; for to perform this one solemn act no further conformity is necessary; so that a compliance with the Test Laws is not a full and entire approbation of the whole constitution and frame of the established church, or a declaration that the communicant is a member of it †.—From

\* “ Every one knows there is a church in this town ludicrously called *The Qualifying Office*; here they attend, many of them, not as if they were prepared for, or understood, what they are going to do. Some of them are sent for out of taverns, or worse places, when the service is ended; and then, that the Gentlemen may not have the fatigue of waiting, and may have the preference of those who only receive out of devotion, the clerk says aloud, *Gentlemen, you that come to qualify, draw near*. Upon this they approach and pay their fees (which I am told, amount in that church to a considerable sum in the year) without loss of time.” *Observations on the present Dispute, &c.* page 18. This was written in 1733; but, to the scandal of religion, *The Qualifying Office* has been open ever since.

† Receiving the Sacrament according to the rites of any particular church, was not originally a discriminating mark of *Religion* among Protestants, for occasional Conformity existed from the earliest period between the different reformed churches. The Episcopalians driven abroad under James the II<sup>d</sup>, joined in communion with the foreign Protestant churches. Bishop Burnet declared he had been an occasional Conformist in Geneva, and Holland. *Lords Debates*, Vol. II. p. 61.



the debates on the occasional Conformity Bill it appears, that a very respectable man was a very zealous Conformist in every respect but one, viz. *infant baptism* \*. And Bishop Stillingfleet tells us, that “ even Brown, the head of the old Separatists, thought it lawful to join with our church in some acts of worship; and others thought they might join in acts of private and christian communion, but not in acts of church communion; others thought it lawful to join in hearing sermons and *pulpit* prayers, though not in others, and yet “ were charged with separation by the old Nonconformists.”

The practice of many of the modern Dissenters, shews that occasional Conformity still exists. Some certainly fall into it from principle; but there may be others who, driven by their necessities, or allured by secular advantages, conform in this one particular, and when this one act of accommodation is performed, return to their old attachments.

The prevalence of this practice not only rendered the Test Laws of no avail against Protestant Dissenters when first enacted, but has ever since prevented their operating to a total exclusion. Several of the most respectable corporations are in their hands, and many offices in others, are at this instant held by them. And the Dissenters in office, added to the Presbyterians from Scotland, employed in the public service, sufficiently prove, that the present Test Laws are, in fact, no security against Protestant Sectaries.—This lessens much the force of the arguments used in favour of retaining these Acts; for it is not a question, Whether *all* Dissenters indiscriminately shall be eligible? but only, Whether the *very few* persons compared with the people at large, who scruple to receive the Sacrament, shall be excluded? The point in dispute is thus reduced to a narrow compass, and he must be a timid politician, who can seriously apprehend danger from *their* admission; especially as sensible men will probably think, that these form the most valuable and moral part of the Dissenters. The clergy and episcopalians who are bigotted may indeed give way to imaginary fears, but a statesman should be possessed of some discernment and firmness of mind. It is easy to see that less would be risked here by granting a just request, than by making it the subject of argument.

The diminution in number of the Dissenters, since they have been relieved from the penal laws, prevents a possibility of mischief to the established church from repealing the Test Acts. Their body would not be increased, and the churchmen would still form a most prodigious majority; they would still far out-number all the sects of Nonconformists *put together*. That majority, which gave the church of England her existence as an established church, and still supports her, is not

\* See Page 23, note ¶.

likely to be diminished by her shewing regard to the rights of others ; especially as it will remove one principal objection of the Dissenters, namely, that she is not enough tolerant.—But should the establishment become the minority, compared with *the whole body* of Dissenters, (which becomes daily less likely to happen,) they could never unite their discordant interests in an attack upon it ; but would prefer the enjoyment of their present portion of liberty, to the chance of being more at ease under each other.

The repeal of the Test Laws would not exclude a single churchman, or put the Dissenters in possession of any one public office, but would only render them eligible to such as might be offered.—The law of England has, whether wisely or not, is not the question here, provided a check against the admission of improper persons. The King, who alone has the disposal of public offices, must be of the communion of the established church ; and he, it may be presumed, will not lavish them on persons, who entertain sentiments inimical either to his government, or to the church over which he presides, and of which he must be a member. The Test Act was intended as a check upon this branch of the prerogative. When that Act passed, the King not only might be, but actually was, of a religion hostile to that, which it was his duty to protect ; and therefore there might be ground of apprehension, while he had the disposal of offices. But that danger is wholly removed by a subsequent law, and the monarch now must be of the national religion.—The offices of corporations too cannot be obtained by Dissenters, but by the suffrages of their fellow citizens \*, who being members of the church of England, will not suffer its interests to be materially affected.—So that the Dissenters, even if the Test Laws were repealed, could injure the state in office only through the medium of the King, or the members of the established church, a very few cases indeed excepted.

Against such Catholics as admit the doctrine of papal dispensations, *if any such there be*, every Test must be of very doubtful efficacy, for it will answer the ends of its institution, not so long as a Protestant government shall exact it, but as a foreign power shall permit it to be of binding force.

\* In the debate on Mr. Beaufoy's motion, Mr. Pitt made a great distinction between legislative and executive offices. For admission to the latter he defended the Test, but insisted that it was unnecessary to apply it to legislative offices, because persons being elected to them by the suffrages of their fellow citizens, the check was in their own hands. Could this statesman forget, that for a similar reason the Corporation Act is unnecessary ; or that Peers, who are created by the King and not chosen by the people, are not obliged to receive the Sacrament ?

The receiving of the Sacrament by those who have a sense of moral obligation, but *deny the divine mission of Christ*, is no proof of their good wishes to the church. Such men cannot feel any very great predilection for Christianity, or be partial to any particular establishment of it. They have made this Test an object of ridicule, but have not found it an obstacle to promotion\*.—Protestant Dissenters, who only differed from the church of England in some minute points of discipline, were excluded from offices, and persecuted, at the time when Lord Shaftesbury was Lord High Chancellor of England; and when Mr. St. John (afterwards Lord Bolingbroke) was Secretary of State, and high in favour with a princess of *pious* memory.

The Sacramental Test, thus in itself a doubtful and ineffectual contrivance to secure the church from danger, is rendered still less efficacious, from the *manner in which it is applied*.—As the government of England is constituted, from those offices which fall within the Test Laws no mischief can reasonably be apprehended; and the ordinary Courts of Justice may compel those who fill them to a strict performance of their duty, and punish all abuses.—As to the offices in corporations, it is too ridiculous to suppose, that because a Dissenter should be a mayor, or a common council-man, the established church of the kingdom would be in danger.—In short, these acts are calculated to prevent disaffection in those only, who are obliged to act in obedience to the commands of others; but leave those who have the power to command, without restraint. They are *wisely* adapted to prevent mischief from quarters whence none is threatened, but not to secure against real dangers, as we shall now proceed to prove.

By the constitution of England, the king is entrusted with the sole administration of government, and is invested with the right of judging in what capacity, and upon what terms, his people are best qualified to act under him in the management of public affairs. Placed in a situation thus exalted, entitled to a negative on the proceedings of the other branches of the legislature, and head of the established church, *his* power is truly formidable. At the time of passing the Test Act, Charles the Second was bound only by his coronation oath to support the church; and this was

\* “ Anthony Collins, Esq. who wrote several treatises against Christianity, was in the commission of the peace; and being obliged to qualify himself according to the Test Act, is said to have given notice of his design in the following ludicrous manner, “ *Sir, I design to take a bit of bread and a cup of wine with you;*” and when he was pressed by a friend upon the impropriety of a person professing his principles, receiving the Sacrament, he answered, I only do it to pay a compliment to the custom of my country.”



esteemed too slight a security, against his attachment to the Papists. Two modes of averting danger suggested themselves, first, obliging the King to give assurances of his affection to the established church; secondly, fixing upon some Test, which should turn out improper persons already in office, and should afterwards restrain this exercise of prerogative. The latter expedient was adopted; and at that time we will admit, for the sake of the argument, that the Test Act was both justifiable and necessary.—But a great alteration has since taken place; and the Legislature has now laid the King under such restraints, that, as a security against the prerogative, there can be no longer occasion to continue this Test. He is, by the Act of Succession, neither to be a Papist nor to marry one; he is to make the declaration against popery; and is bound to join in communion with the church of England. One would think these restrictions would satisfy the clergy, without requiring that the royal prerogative should be further abridged; and that the power of appointment being vested in a King so conforming, would be a sufficient security, that dangerous persons should not be admitted into public offices.—This restraint laid upon Charles the Second, in his capacity of *King of England* only, and by an *English* Parliament moreover, ought not to extend to a King of *Great Britain*. As the father of his people, his cares and affections ought not to be confined to one part of his subjects only, but ought to extend to the inhabitants of every part of the empire. He must therefore feel repugnance, at being forced to withhold the public confidence from his Scottish subjects, unless they will give up their own religious principles, and submit to receive the Sacrament according to the rites of the church of England. The security afforded to the church by the Act of Succession renders the restoration of the prerogative to its ancient splendour, a matter of no risk; more especially as the danger from a Popish Pretender to the crown is over, and a Prince of that persuasion can never again be seated on the throne of Britain.—It would not be difficult to shew, that barely restraining the King's prerogative to the appointment of communicants in the established church is of no real security to it. James the Second, notwithstanding this boasted Test Act, filled the offices of state with Roman Catholics; and, having the whole executive power vested in him, nothing but a general revolution could have prevented his continuing them there. So far, then, as *the King* is concerned, this Act may be repealed without additional danger to the church, for the restraint imposed upon him is weak and insignificant; and if it was not so, a subsequent Act has fully provided against future perils from that quarter.—Besides, covert evils are generally more dan-

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gerous to all governments, than those which are apparent and capable of exciting immediate alarm.

Next to the King in dignity and consequence are the two Houses of Parliament; and upon them the Test Act puts no restraint. This, to the advocates for the Sacramental Test, must appear an indefensible omission; to its enemies it affords ground for exultation and triumph. Those who are invested with the power of making laws, can certainly do more essential injury to an establishment, than any other class of men. Through *them* alone it can be shaken or destroyed. It exists but at *their* pleasure, and the executive branch of the government is authorized to support it only so long as *they* think fit. The Dissenters then do not ask much, when they solicit to be exempted from laws, which do not call upon the members of the legislature, to give proof of their affection to the establishment.

This defect, as some may think, in the Test Act, was remedied by a subsequent law, devising a Test of *another kind*, for security of the establishment from disaffection in the members of either House of Parliament. Several attempts had been made to introduce a Test to exclude Protestant Dissenters, but they were successfully resisted by those who had most zealously supported the Test Act; and about five years only after that Act had passed, an Act was made, requiring all members of both Houses to take the oaths of allegiance and supremacy, and to make the declaration against popery before they took their seats. This Test in substance was under consideration of the House of Commons about the time the Test Act passed; and was then intended to extend to legislative, as well as other offices\*. It was purposely framed to exclude Papists, but to admit Protestant Dissenters; and there cannot be a stronger proof, that the House of Commons found nothing in the principles of the Nonconformists inconsistent with the security of the church, since the express object of this contrivance was to obtain their assistance in its favour against the common enemy. If the exclusion of Papists be still an object of importance in the narrow policy of the establishment, this Test might be substituted in the room of that at present required. The experience of more than a century has proved its efficacy; and it certainly is a more rational one, than the perversion of a holy ordinance from the original and sole purpose of its institution.---The efficacy of this test is a decisive answer to all arguments for retaining the Sacramental Test, as the *only* means of securing the established church against Papists; for here we have two co-existing tests; and,

\* See page 16.

what ought to weigh much when the question is only as to an exchange in favour of Protestant Dissenters, the one is liable to very serious objections, the other is entirely unexceptionable, as far as respects them.

In fact, the Test Laws have been of little service either to the church or state in times of danger; nay, it is remarkable enough, though easily to be explained, that the most serious attacks upon both have proceeded from those who have not scrupled to qualify as prescribed by law; while the warmest friends of both have been found among those outcasts of the society, who were excluded from all civil trusts. Through the reigns of Charles II. and James II. the church frequently gave support to the arbitrary designs of the court, even when they obviously tended to its destruction. The whole bench of Bishops (except three) voted against the Bill of Exclusion, and, as members of a Protestant establishment, endeavoured to secure a Papist for its head\*. The majority of the members of the church opposed the glorious Revolution, and struggled that their religion should be left at the mercy of a popish prince; the doctrines of the divine indefeasible right of Kings, and of passive obedience and non-resistance, were thundered from their pulpits; and if the Dissenters (who were then a much more numerous body than at present) had not generously lent assistance, the church of England must have been overwhelmed, and the constitution ruined. The opposition which our great deliverer met with through his whole reign, proceeded from the zealots of the church; who, rather than behold the opinions of others treated with kindness, wished to restore the fallen tyrant, and to light up the flames of persecution, at the hazard of being scorched themselves. In the reign of Queen Anne, the high church party, who took the test themselves and forced it without mercy upon others, had nearly accomplished the restoration of the Stuart family; and were defeated in their design by the Dissenters, without whose aid all resistance from the church must have been unavailing. The two rebellions of 1715 and 1745, were raised and supported principally by Episcopalians, including the Dissenters of that persuasion in Scotland; while not a single English Dissenter was found in either.

In these instances the danger to the church has uniformly arisen from false friends *within itself*. This is the necessary effect of the present system of Test Laws, by which it be-

\* A similar inconsistency of conduct was exhibited in Scotland at the time of the Revolution: The prelates of that kingdom, without, I believe, a single exception, zealously adhered to the popish tyrant, and gave every opposition to their protestant deliverer. They met with their reward, for *their conduct* occasioned the abolition of Episcopacy in that country, and the establishment of Presbyterianism in its room.

comes a receptacle for the wicked and profligate of every other sect. Men of *bad* principles, or of *no* principles, will readily yield to the allurements of interest and fashion, and at their call conform to any established church, in this or any other particular. Hence none but the virtuous can be excluded, by a religious qualification. The conscientious Dissenter or Roman Catholic may be thereby kept out, but those who disgrace the religion of either are received with open arms.---It will be difficult to satisfy the enlightened part of mankind of the policy of continuing a test which excludes the good, but does not keep out the wicked; which affords no real and effectual security to the established church; and tends greatly to the destruction of religion and morality, by holding out temptations to men to become hypocrites, and bear the semblance of being what they are not. Conformity is purchased at too dear a rate, when religion is made the price.

But further, the repeal of the Test Laws, while it would be a relief to many of his Majesty's faithful subjects, would in no way affect the church. It was established long before these Acts were made, and so would continue, if they did not exist. Its doctrine, discipline, revenues, and preferments, would remain exactly the same as at present. Not one article of its doctrines, not one rule or ceremony of its discipline, not one particle of its revenues, or the smallest preferment, would be turned out of its present channel. That repeal would leave them where they are, fully protected by statutes, and fenced in by canons. No legal power or privilege would be taken from the church, nor would any thing be introduced which could pave the way for future danger. On the contrary, the friendship of a respectable body of men, rendered contented by such a measure, would add to their security; especially if there is the least colour for pretending, that the Dissenters have it in their power to become formidable.

If questions of late have been agitated concerning tythes, has it not been by the landed interest? or if concerning ecclesiastical courts or powers, has it not been in the legislature only? Have not the Dissenters been silent as a body, except when attacked, or as mere controversial writers on points of doctrine, and not of power or possessions?---And on the other hand, have they not fought the general cause of religion against deists and atheists, and, by the confession of many dignitaries in the church, (who have made the circumstance matter of reproach to their own inferior clergy) have they not done it with great zeal and effect, and has not this ultimately strengthened the establishment?—In short, they have founded their chief comfort in tranquillity; and manifested every mark of satisfaction in the civil and religious constitution of their country, their own hardships excepted?—Their ministers have made no ill  
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use of the enlarged toleration lately granted ; nor will their laymen of that now sought for. The church may therefore rest assured, that the Dissenters are never likely to attack *their* rights, unless it should be indispensable for the restoration of their own ; and that the most effectual way of disarming them as foes is by making them friends.

## C H A P. VI.

*Relieving Protestant Dissenters from the Test Laws, advantageous both to Church and State.*

**T**HE excluding of men from the public service of their country, is evidently a weakening of its whole collected strength, exactly as the detaching of a large body weakens the force of an army ; and if numbers only are to be adverted to, the effect must be greater or smaller according to the quantum of subjects incapacitated. But as the persons *best* qualified to perform the duties of any particular office may be among those excluded, it may happen that the public may sustain an injury greater, beyond all proportion, than the mere loss of numbers.

That nation is the most strong (*ceteris paribus*) where the people are most united ; and that is the most weak where intestine divisions rage with greatest violence. Of course the relative strength of this island is infinitely greater than before the Union ; for by that great event every cause of dispute between the two sister kingdoms was removed, and both were united in one common interest, instead of weakening each other by perpetual jealousies and broils.—For the same reason the executive power has of late acquired a vast accession of strength. The two first Princes of the House of Hanover were called upon, almost without respite, to punish plots, to quiet rebellions, and to repel open attacks upon the Crown. But how widely different the present reign ! His Majesty has for twenty-eight years swayed the British sceptre in perfect peace at home, at least from the factions which before were wont to agitate the empire ; the claims of a foreign Pretender to the throne are worn out and forgotten ; the Nonconformists have been daily diminishing in numbers, and those that are left have, by lenity and kindness, been much conciliated to the national church. So that his Majesty presides over a people more powerful and united than any of his predecessors ; and the kingdom enjoys a tranquillity which has not been known for centuries in Britain ; for the parties of politicians now subsisting make but a small figure in a national view, and secure, rather than shake, both throne and constitution. If the ministers of the church, therefore, fancy themselves to be *allied*



to the state, they must feel that their establishment grows more firm, as the throne becomes more stable; and an attention to their own interest, as well as the precepts of Christianity, should induce them to strengthen this union, and to render this tranquillity as permanent as possible. To accomplish these objects, no means can be devised so effectual and so certain as the removal of every cause of uneasiness on account of religious matters, more especially when it will be followed with no danger to the state or their own religion.

The situation of foreign countries, with regard to Britain, affords strong arguments for the repeal of these Acts, by which the rights of the Protestant Dissenters are so materially abridged. The immense importance of manufactures to a country, is now universally acknowledged. By them Great Britain has been chiefly raised to wealth and glory, and enabled to rank foremost among the powers of Europe. But by whom were these manufactures introduced among us?—By those whom persecution exiled from *their* country\*, and drove for an asylum among us. To the intolerance of our neighbours we owe the introduction and perfection of some of our most important manufactures, among others the woollen, stuff, silk, and cotton.---But when these strangers sought for liberty of conscience in England, it was not necessary to receive the Sacrament, to entitle them to the rank of citizens. They were received with open arms, and without conditions.---Subsequent experience has proved that the imposing of a religious Test on those who offer themselves as subjects, is an unwise and impolitic restraint; for since the reign of James the First, we can boast of no material accession to the skill or industry of the nation from the settlement of foreign subjects. As we profited formerly by being more liberal than other nations, so it is possible that others may now reap advantage from being more liberal than ourselves.---The states of America, for instance, offer to Sectaries free access to public offices. Happily for England, the present unsettled situation of that continent deters Dissenters from emigration; and the restoration of their rights may, perhaps, so far attach them to their native country, as to prevent them from removing. But should this opportunity be let slip, and a rage for emigration arise, its

\* ‘As for the debates about the foreign Protestants, there is great reason to give them all just encouragement; for as they have brought among us many new manufactures, so they have carried them so far, that of late years we have exported to the value of a million of woollen manufactures more than was done in King Charles’s reign, before they came among us; and the putting them under apprehensions or discouragements, may be a means to drive them to a country where they are sure of an entire liberty.’ *Reasons of Lords on Occasional Conformity Bill*, 1702.—Chand. Vol. III. p. 241.

consequences may be serious. It depopulated part of Ireland before the Test Act was repealed there, and may have the same effect upon this kingdom.

The treaty of commerce with France will shortly make a great alteration in religious matters; for by the 5th Article it is provided, that "in matters of religion the subjects of the two crowns shall enjoy perfect liberty: They shall not be compelled to attend divine service, whether in the churches or elsewhere, but, on the contrary, *they shall be permitted, without any molestation, to perform the exercises of their religion privately in their own houses, and in their own way.*" These words mean much more than they seem at first to import. Catholics cannot perform the exercises of their religion without the assistance of priests; of course it is implied from this article, that their priests shall be tolerated; and as no Test or subscription can be required from them, *they* will enjoy a more perfect Toleration than the Dissenting Ministers, who are obliged to submit to one.—"*Privately in their own houses,*" are words of great latitude and extent; the priest, who is saying mass, and exempted in so doing from the penal laws, is not bound to perform his spiritual duties to the family only; others may be present; and, as no number is limited, any number may be collected. By this means this private assembly becomes virtually, and for the purposes required, a public one; and as no common room can contain a multitude, a large one may be built for their accommodation, and thus a public meeting-house be obtained.---God forbid that any thing should fall from the pen that writes these pages, tending, in the smallest degree, to abridge the religious indulgence given by this treaty. I rejoice with the friends of religious freedom, that the severity of church power has been relaxed; but I contend that this clause will in effect give to the Catholic subjects of France, and, as the English Catholics are not prohibited from assembling with them, to the Catholics of England also, the liberty of holding their religious meetings *publicly*; and that they will be, in this respect at least, in a better situation than the Protestant Dissenters. The Dissenters then may justly think their lot a little hard, if, when the stream of national liberality carries benefits profusely to the subjects of another nation, and the professors of a religion, till lately at least, hostile to the church, it should not be allowed to bend its course to *them*.

In return for this indulgence, France has agreed \* to grant a toleration of equal extent to British subjects; and thereby the

\* The late edict, respecting the toleration of Non-catholics in France, renders this indulgence independent of the treaty; and the language of the clergy respecting it, plainly indicates the temper of the French nation to be at present in favour of toleration.

grand objection of our manufacturers to settle in that kingdom, is unfortunately removed. A Protestant Dissenter may now esteem it a matter of indifference in which country he takes up his residence, since his religious opinions are *equally* tolerated in both. By using the word *equally*, we do injustice to the liberality of France; for in his own country the public offices of the state are shut against him, unless he takes the Sacrament according to the rites of the church of England; while in France they are virtually open *without conditions*, to all whom the King may honour with his confidence.

Under the administrations of Cardinals Richlieu and Mazarin, Protestants held offices both civil and military; and the latter intrusted Turenne, who was a Protestant, with an army against the Prince of Condé, not only a Protestant, but his relation. Schomberg, Ruvigni, and many others, were placed in offices of high trust and consequence, under Lewis the Fourteenth, till the revocation of the edict of Nantz\*. But to come down to later times, Marshal Saxe was employed by Lewis the XVth to oppose a Protestant army; and the court of France has, within these few years, raised Mr. Necker, a Protestant also, (originally a private citizen of Geneva) to the head of the finances. His zeal and public spirit, as well as the example of other Protestants, have deeply impressed this truth upon the minds of his fellow-subjects, *that a Dissenter from the established religion of a country may be a true friend to its interests*. The wisdom and ability with which he has discharged the trust reposed in him, have reflected infinite honour upon himself; and the principles he has fostered may, at some future period,

\* By the edict of Nantz, Art. 27. it is expressly ordained, that Protestants shall be admitted equally with Papists to all offices; as it shews how much more liberal a Popish country was, almost two centuries ago, than England is even now; I transcribe the Article at length.—*Afin de reunir d'autant mieux les volontez de nos sujets comme est notre intention, & oter toutes plaintes à l'avenir; Declérons tous ceux qui sont ou seront profession de la dite Religion prétendue réformée capables de tenir & exercer tous états, dignitez, offices, & charges publiques quelconques, Royales Seigneuriales ou des villes de notre dit Royaume, pais, terres, & Seigneuries de notre obéissance, nonobstant tous sermens à ce contraires, & d'être indifféremment admis & reçus en iceux; & se contenteront nos Cours de Parlemens & autres Juges d'informer & enquerir sur la vie, mœurs, religion & honnête conversation de ceux qui sont ou seront pourvus d'offices tant d'une religion que d'autre, sans prendre de ceux autre serment, que de bien & fidèlement servir le Roy en l'exercice de leur charges & garder les ordonnances, comme il a été observé de tout tems. Avenant aussi vacation des dits états charges & offices pour le regard de ceux qui seront en notre disposition, il y sera pourvu indifféremment, & sans distinction de personnes capables, comme chose qui regarde l'union de nos sujets. Entendons aussi que ceux de la dite religion prétendue réformée puissent être admis & reçus en tous conseils, deliberations, assemblées & fonctions, qui dependent des choses dessusdites; sans que pour raison de la dite religion ils en puissent être rejettez ou empêchez d'en jouir.*



make Great-Britain regret, that a Popish country should disdain to be shackled by maxims of religion intolerant as her own.—The popularity attending most of the above promotions, is a clear proof that the kingdom of France was influenced by some liberality, as well as its Princes.

In the Imperial armies, and in some of the Imperial dominions, Protestants have often been raised to high offices and commands, and many are at this day in their hands. The attention lately paid by the Emperor to the interests of his Protestant subjects, leaves no room to doubt that the remaining distinctions between them and the Catholics are dying away.

The Empress of Russia too has not scrupled to employ in the highest offices, persons dissenting from the established religion of her dominions. The naval power of Russia will be a lasting memorial of the services of Admiral Greig,

On the other hand, the practice of the countries in Europe, professing the Protestant religion, proves, that a Sacramental Test is not *necessary* for the security of an established church, for it is unknown to them all. And there is no example in history, of any of their churches being in danger, merely from the admission of sectaries into office.—In Holland, where the sects are more equally balanced than any where else, and of course where the established church is most likely to be insecure, persons dissenting from it are admitted into offices without giving any assurance of conformity; and from military employments, I believe, even Papists are not excluded. This small state is a proof that, as religious distinctions (when the civil magistrate shews a partiality to some, beyond what is necessary for support of the establishment), tend to divide a people; so where the civil government does not interfere, they do no mischief.—What must have been the fate of Holland, if Non-conformists had been excluded? Its inhabitants, with their whole united force, have often found it difficult to defend their scanty territory against the inroads of powerful neighbours; but if intestine religious divisions had reigned, and the government had been occupied with settling the disputes of the several sects struggling for superiority, and with keeping peace at home, they must have lost their independence, and been reduced, long ago, to the humble situation of a province to some other power. If then a country acquires strength from union among its subjects, if the operation of Test Laws is to divide and weaken, and if these laws can be removed without commotion or inconvenience; the result is, that it is expedient to remove them, and thereby add to the national strength.

The situation of Scotland and Ireland strongly evinces the expediency of their repeal.—There is no necessity in Scotland to take the Sacrament according to the usage of that church, as a qualification for offices; and yet, if such a Test is the *only* mode



mode of preserving one church, it must be the only mode of preserving the other; and surely if the establishment of Scotland is safe, that of England cannot be in danger. Now the church of Scotland is perfectly safe, although its King professes another religion; although by the Union a whole nation of strangers is let in upon her; and although, since that Union, a race of Dissenters, almost unknown before, has been introduced and tolerated.—It cannot be disputed, that the repeal of the Test Laws must be highly grateful to the Scottish nation, who complain with reason of the unjust preference obtained by England from the monopoly of offices in its own church, and that it will promote a union of affection between two nations already united by law.

It may be objected, however, that in Scotland there are not many Episcopal Dissenters or Papists; and therefore the national church can be in no danger, from the want of a Sacramental Test. This objection has been answered already, by shewing, that, from the peculiar situation of that country, it has more pleas in favour of a Test Act, than perhaps any other in the world; for, with respect to Scotland, the whole nation of England are Episcopal Dissenters.

But our sister kingdom of Ireland affords a compleat answer of another kind. There, the Bishop of Cloyne, in his late publication, tells us, that the Protestant Dissenters are nearly equal in number to the members of the established church, and that the Catholics greatly exceed both put together. Yet the Test Act (which was copied from our own \*) was repealed nine years ago, and the Dissenters have been ever since eligible into all public offices, without any assurance of their conformity to the established church. From this liberality, no inconveniences have ensued.—So far from it, that to this indulgence the establishment will probably be indebted for its preservation. The right reverend prelate abovementioned tells us, that a regular plan is formed for the destruction of the episcopal church, and that its existence, perhaps, depends on the conduct of the Dissenters, whose interference is likely to be de-

\* In Ireland the Test Act was not introduced till the second year of Queen Anne, 1703. It pursued the terms of the English Test Act; and all persons then in office, or who should be admitted before Easter Term 1704, were required to receive the Sacrament according to the usage of the church of Ireland, before the 1st of August 1706; and every person admitted after that day was to receive it within three months after his admittance. The subjects of Ireland were fortunate in another respect, for by the 6 Geo. I. c. 9. all prosecutions against this Act were to be commenced *within two years* after the admittance into office of the person prosecuted. The Test Act continued in Ireland, even with this mitigation, only *seventy-seven* years: in England it has been in force *one hundred and sixteen*.

cisive either way \*. He excuses himself for making signals of distress, and calling out for assistance †, because the church is sinking under the machinations of its enemies. From the gentle treatment of the Dissenters of Ireland, and the confidence reposed in them by their country, their minds are much conciliated to the establishment, and they may be disposed to assist against the common enemy; but an opportunity now presents itself of attaching them still more strongly to the church, and of infusing that zeal for its cause, which can exist only where a warmth of affection is felt.—Let the parent church grant to their brethren of England, the same liberal terms of toleration, which they happily enjoy under its offspring. This will be the strongest assurance, that the establishment of their country will never resume a persecuting spirit, and that the church of ours is no longer willing to retain it.

An argument against continuing the Sacramental Test, suggests itself from the nature of establishments in general, especially where they have been formed for any length of time. According to Bishop Warburton, the established church of any country is the natural *ally* of the civil government, and “the † great preliminary or fundamental article of alliance is this; *that the church shall apply all its influence in the service of the state*, and that the state shall support and protect the church.” The church then, according to him, had two objects, one *religious*, the other *political*.—Upon the bare statement of this system, what monstrous corruptions and abuses must it appear to give rise to! Professors of religion cannot at once worship God and Mammon; and, as the service

\* “They can have nothing then before them but an option of the ascendancy of either the church of Ireland or the church of Rome. Of the former they have had a long trial, and under it have always experienced freedom of religion, and at present enjoy every civil privilege in common with the members of the established church. Their situation cannot be improved; how much it may be changed for the worse under the church of Rome, it behoves them to consider with attention and without delay; as the conduct of so numerous and respectable a body may decide the event.”—History of the Church of Ireland, p. 69.

† The Bishop apologizes for republishing in England a pamphlet relating to the church of Ireland.—By so doing, he has justified the Dissenters here, should they call upon their brethren in Ireland for assistance. And their interference would be decisive: for government could not allow the church of Ireland to be ruined, (as the Bishop supposes possible) in order to retain the Test Act here.—If the English Dissenters do not avail themselves of this influence, it will certainly be another proof of their tranquil disposition towards government, and even among themselves. Public principles and public interests unite the Dissenters of the two countries, and it would not be difficult for them to assist each other. The English Dissenters, in all their former applications respecting the Test Laws, stipulated for the relief of their brethren in Ireland, and therefore are now entitled to a return of kindness.

1 Alliance between Church and State, p. 68.

of the state is attended with greater temporal profits than the service of religion, Mammon has constantly had the advantage. In experience, the established church has ever been a faithful ally to the Crown in its incroachments on the liberties of the people, and has never withdrawn from the banners of despotism, but when its own usurpations have been in danger.

A system of spiritual tyranny erected on this foundation, more or less oppressive according to the spirit of the nation over which its dominion is exercised, must dread a rational examination of its rights; for, whenever the spirit of inquiry goes forth, all its usurpations are in danger. For this reason, concessions in small matters are politic and wise; resistance will occasion discussion, and the establishment lose in character more than it can gain by victory. For the sake, therefore, of the church itself, its best friends ought to wish anxiously, that the intended application of the Dissenters may meet with no opposition.—The friends of religious liberty (they may rest assured) will be indifferent about the event, if in its consequences the rights of mankind shall be better understood, the unjust conduct of the establishment exposed to public view, and the claim to a full and perfect toleration of those who differ from it asserted and acknowledged.

It will be a little singular, that when Deism increases, when taxes grow burthensome, when the press is open, when a liberal spirit is rising by a sort of common consent in the public, and in the government of every nation in Europe, that the clergy of this country, who have such large civil privileges at stake, besides their ecclesiastical ones, together with immense revenues, (not collected in a mode to give perfect content, nor yet distributed among their own members in a way to give a due subsistence or satisfaction to all;) it will be singular, if, under such peculiar circumstances, the dignitaries of the church should oppose the course of policy and justice in favour of the Dissenters, who have so many pleas in their favour; so little terror to inspire, when duly treated; and whose cause will plead eloquently for them in the present age, were they themselves to remain silent, which yet cannot be expected. Those are wise who have preventive wisdom; and, taking into consideration the circumstances just stated on the one hand, and the little to be gained by an obstinate resistance to reform in favour of so small a body of persons, whose case can be drawn into no precedent if relieved, there can be no doubt on which side preventive wisdom lies.—It is not a selection of a few characters, and a few writers, from among the whole body of Dissenters, that can justify any harsh conclusion as to the whole of them, and much less any harsh measure. They are to be judged of generally, for a course of time, and with the eyes of a statesman; and the more especially,



ally, as a refusal of their requests will produce no change in the individuals complained of, who, if they offend at all, must be acknowledged to offend even under the present system of severity and ill-will.

With one observation more, addressed to those, who retain the notion that the bare existence of Nonconformity is an evil to a state, I shall conclude this part of the argument.—I will not pay these persons so ill a compliment, as to suppose, that a little reflection would not cure them of this prepossession. The religious, as well as political system, benefits by a little variety of opinion, and by an opposition of characters; and the many able defences of natural and revealed religion, and the many excellent moral writings proceeding from the Dissenters, are a proof that they have afforded a positive advantage to the church, by confirming that grand *basis* on which it is ultimately built. Their writings also have, in the opinion of many of the clergy, helped to liberalize the church itself; which, if there had been no sects existing, would probably have retained many of those absurd tenets which prevailed a century ago. The greater strictness of education among the more rigid sectaries, is another advantage arising from Nonconformity, and hence chiefly manufactures and commerce have been found to prosper so much in the hands of sectaries, where they have not been too severely treated; and hence likewise their riches, and, as a consequence of their riches and softened manners, their frequent reunion, in a few generations, with the establishment of the country where they are found.—But such is the propensity of mankind to variety of opinions, that were there no sects now among us, they would soon start up out of the church itself, of which certain respectable favourers of Socinianism have furnished a signal example; and persecution is not only a bad measure in itself for preventing it, but it is too late in the day to use it\*.

It

\* Religious freedom (which is an essential assistant to trade), appears daily gaining strength and popularity; its chief obstacles lying in the bigotry or habitual bad politics of established clergymen, and in the complaisance of timid or subtle statesmen in their favour. In return for the contributions made by men of other religious persuasions to their permanent support, the established clergy in general, throughout Europe, have not only encouraged the exclusion of such persons from civil offices, (though these persons contribute to the support of civil offices also), but they have usually in the first instance pleaded even against indulging them in the privilege of cultivating their religion in private.—The clergy beyond all men, one might suppose, ought to know, that religion is a belief and not a form, a personal and not a state concern; and that though the state may derive benefits from its prevalence, it ought never to prescribe the particular modes of it. But, since experience has shewn that none have been more ready than the clergy to interfere in the private concerns of other men with their Creator, and that no associated body of men is so

slow

It has been found in all countries, and been felt by none more forcibly than England, that lenient measures are best calculated to diminish the number of Nonconformists. It is an approved maxim in religious politics, that by taking away the distinctions which separate them from the establishment, they are most likely to be joined to it. They are united *as a body*, only under persecution; and the instant they are suffered to form one mass indiscriminately with the rest of the people, they cease to be formidable. Deprive them of that zeal which leads martyrs to the stake, and they lose the power to resist temptation. The proud and haughty spirit which bears undaunted the infliction of corporal punishment, or of death itself, submits quietly to the suggestions of interest, and the allurements of the world. One of the most grievous oppressions under which the Dissenters now labour, is their exclusion from offices; and this mark of reproach is the chief circumstance, which distinguishes them from their fellow citizens. Rapid as we know the decrease of numbers among them to have been since the Revolution, some even of their own body have been of opinion, that if they had been restored at that period to *all* their civil rights, it must have been much greater; and such have dreaded the removal of the Sacramental Test, as the most fatal circumstance that could happen to their interest\*.—If this argument is not sufficient to prove, that the Dissenters will be gradually

\* slow in reforming its errors as their own; it is time that the civil power should interfere, and decisively abolish every thing favouring of religious persecution; confining the power of the clergy to the discipline of their own followers, subject to their own consent.—As to the *sectaries* of modern Europe, I conceive that facts and authorities prove it to be beneficial to a country, that part of its inhabitants should be of this description; or at least, if sectaries have no positive advantage to recommend them, it is certainly impolitic, where sectaries occur, either to expel or to oppress them; and not less impolitic to deny them shelter, when they seek admittance from foreign parts in numbers too small to create danger; especially where they possess wealth, skill, or extensive commercial connections. The religious forbearance that daily and mutually encreases among men of all persuasions, constantly lessens the probability of serious disputes arising from different religions being professed in the same neighbourhood; especially where the state applies a due authority in support of the general peace.—New and Old Principles of Trade compared, page 50, & seq. See also the notes, *ibid*.

\* Those who entertain this opinion, should consider how fatally the Test Laws have operated against the Dissenting interest. Men of considerable *property*, whether Dissenters or others, look to the honours of the state, *Their riches* lead them into connexions which soften and relax their principles, and the influence of custom and example leads them to comply with the Test Laws, and accept of offices. In order to avoid the reproach of having acted upon interested motives, they lastly become regular church-men; and these conversions have been so numerous since the Revolution, that hardly any families of rank and landed interest are now left among us. Had there been no Test Laws, there would have been no inducement for the wealthy Dissenters to have deserted their principles.

extinguished

extinguished by the grant of their wishes (an event which a statesman, and the wiser clergy, would have to view with some regret); still it will be sufficient to prove, that no *new* dangers to the state, or church, are to be expected to result in consequence of its increasing their numbers, their want of tractability, or their power.

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## C H A P. VII.

### *Objection from the Union with Scotland, stated and answered.*

**T**O every application of the Dissenters since the accession of the House of Hanover, it has been objected, that, by the Articles of *Union* with Scotland, the Corporation and Test Acts were made perpetual, and therefore *could not* be repealed. — There never was an objection more weak and futile. It was fully answered by Dr. Sykes, and others; but, as it has been revived upon the present occasion \*, we will enter into some discussion of it here.

It is contended, because all Acts in force at the time of the Union, for the *establishment* and *preservation* of the church of England, its *doctrine*, *worship*, *discipline*, and *government*, are to remain in full force for ever, that therefore the Corporation and Test Acts, being then in force, cannot now be repealed. In the note below will be found the passages, both respecting England and Scotland, which are here referred to †; and I protest  
I am

\* This argument has been ever ready in the mouths of high churchmen, and has been most absurdly misapplied. In the year 1717-18, a clause in an Act passed *seven years after the Union*, (and therefore perfectly unconnected with it) requiring the guardians of the poor at Bristol to qualify as appointed by the Test Act, was repealed. And in a solemn protest against the repeal, signed by several Lords, it is *gravely* stated as one of the reasons, that it *very much weakened* the force of the Acts for security of the church of England, and as such, as they conceived, ratified and made perpetual *by the Act of Union*. This was the first opportunity for using the argument, and it has never been forgotten since. It had as much to do with the Bill then in question, as the ballad of Chevy Chase.

† In the Act of Union, an Act of the Parliament of *Scotland* for securing the Protestant religion and Presbyterian church government within that kingdom, is recited, by which her Majesty, (to use the words of the Scotch Act), “with the advice, &c. doth thereby establish and confirm the  
“said true Protestant religion, and the worship, discipline, and govern-  
“ment of this church, to continue without any alteration to the people of  
“this land to all succeeding generations; and more especially her Ma-  
“jesty, with advice and consent aforesaid, ratifies, approves, and for ever  
“confirms the 5th Act of the first Parliament of King William and Queen  
“Mary, intituled, *Act ratifying the Confession of Faith, and settling Presby-*  
“*terian Church Government, with all other Acts of Parliament relating*  
“*thereto,*



I am at a loss upon which expression to fix, as in the smallest degree affecting the Acts on which the Sacramental Test depends. They certainly cannot be made eternal by the articles of Union as relating to the *establishment* of the doctrine, worship, discipline, or government of the church; for all these were established long before the receiving of the Sacrament was made a test for admission to offices. Nor can they assist towards the *preservation* of any of them. Whether persons in civil offices take the test or not, the *doctrine* remains the same: The ministers of it must still go through the same service, and are liable to the same spiritual censures. The form of *worship* too must in either case remain untouched, for the Test Laws neither prescribe nor prevent innovation. The same observation

" *thereto*, in prosecution of the declaration of the estates of this kingdom containing the claim of right, bearing date the 11th of April, 1689. And her Majesty, with advice and consent aforesaid, expressly provides and declares, that the aforesaid true Protestant religion contained in the above-mentioned confession of faith, with the form and purity of worship presently in use within this church, and its Presbyterian church government and discipline, (that is to say) the government of the church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies," shall remain unalterable; and every King of Great-Britain at his accession to the crown is to swear, that he "shall inviolably maintain and preserve the foresaid settlement of the *true* Protestant religion, with the government, worship, discipline, right and privileges of this church, as above established by the laws of this kingdom (Scotland) in prosecution of the claim of right."—Another Article \* of the Act of Union declares this to be an essential and fundamental part of the Articles of Union.

A similar Act for securing the church of *England* as by law established, is also incorporated in the Act of Union, and runs thus: "And whereas it is reasonable and necessary that the *true* Protestant religion professed and established by law in the church of England, and the *doctrine*, worship, discipline, and government thereof, should be effectually and unalterably secured, be it enacted," &c. "that an Act made in the 13th year of the reign of Queen Elizabeth of famous memory, intituled an Act for the ministers of the church to be of sound religion; and also another Act made in the 13th year of the reign of the late King Charles the Second, intituled an Act for the uniformity of the public prayers and administration of sacraments, and other rites and ceremonies, and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the church of England (other than such clauses in the said Acts, or either of them, as have been repealed by any subsequent Act or Acts of Parliament) and all and singular other Acts of Parliament now in force for the establishment and preservation of the church of England, and the *doctrine*, worship, discipline, and government thereof, shall remain and be in full force for ever:" And every King of Great-Britain, at his accession to the crown at his coronation, shall "take and subscribe an oath to maintain and preserve inviolably the said settlement of the church of England, and the doctrine, worship, discipline, and government thereof as by law established within" England, Wales, and Berwick upon Tweed, "and the territories thereunto belonging."

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\* Art. 11.

applies to its *discipline* and *government*, for whether a civil officer comes to church to receive the Sacrament, or not, its discipline and government go on as before. And as the Articles of Union are thus clear of all reference to these Acts, so are these Acts clear of all particular reference to the objects of the Articles; being from the nature of them in some degree temporary, and respecting circumstances without the church, and not within it; circumstances which might, and actually have changed, and which therefore leave these Acts to be altered at the discretion of the state. The Corporation Act was made, for example, to provide at a particular moment, for perpetuating a succession of persons well affected to his Majesty and the civil government, and for the preservation of the public peace in church and state; the Test Act was likewise made on the spur of the occasion for preventing dangers which might happen from popish recusants, dangers even now not to be dreaded as formerly, if they have not entirely ceased.

The conduct of the Scotch in settling the Articles of Union, was distinguished by a generosity similar to that which had distinguished the Dissenters of England, when the Test Act was first introduced. The enemies of the Union proposed in the Parliament of Scotland, that their countrymen should be exempted from the Corporation and Test Acts; but the friends of the Union prevailed upon the majority to throw themselves upon the mercy of the country they were about to be incorporated with, rather than stipulate for terms which would have risked a total separation. It would never have been understood, that, in consequence of this generous confidence, they must be *for ever* afterwards excluded from the offices of England and of Great-Britain. The pamphlets published from 1732 to 1736 assert, that in order to remove this obstacle, the Queen and her ministers gave them assurances, that when all was settled, this grievance should be attended to; and what renders the story more probable, is that Lord Barrington, then a young man and a Dissenter, went over to Edinburgh to expedite the negotiation for the Union, and that the English Dissenters in general lent a helping hand.—The Scotch were requited exactly as the Dissenters had been before; and from the time of the Union to this day they have remained excluded from many of their *own offices*, unless they comply with the ordinances of a foreign church.

In a very few days only they had a signal proof of the folly of their conduct; for an attempt was made in the House of Commons\*, even before the terms of the Union were finally settled, to give perpetuity to the Corporation and

\* See page 24.

Test Acts, by inserting them in the Act for security of the church of England, but fortunately without success. A similar motion in the House of Lords met the like fate. These proceedings put an end to all question; for the legislature absolutely refused to make these laws perpetual, and *purposely* omitted them, that they might be repealed or altered as circumstances should require.—The conduct of the high church party too is conclusive against their present argument, for they moved for clauses *to make laws perpetual*, which they now contend were already so.

Even if the words of the Act of Union had been ambiguous, or could have been tortured to include the Corporation and Test Acts, the legislature itself has in many instances shewn, that they were never meant to carry a sense so extensive and so absurd; for in points much more nearly affecting the doctrine, worship, discipline, and government both of the church of Scotland and of England, it has made alterations.—Thus by an Act made before the Union, (*viz.* in 1690) the right of nominating to vacancies in the church of Scotland was placed in the heritors and ministers; but by an Act made four years only after the Union, that right is vested in the patrons. This is certainly an alteration of something *very like* the *discipline* of that church.

But the innovation made by the 10 Anne, concerning *Episcopal Dissenters* in Scotland, is still more applicable. By that Act they enjoy a *complete* toleration, and are not restrained (as the Dissenters in England) from the enjoyment of offices; and to give them a right to baptise their children in their own way, they were exempted from certain penalties which the Scotch church judicatories had before the power of inflicting. To accomplish this, two Acts of the Scottish parliament, made *before* the Union, were altered or repealed.—The grant of a toleration to Episcopal Dissenters neither affected the doctrine, worship, discipline, or government of the church of Scotland; and therefore the legislature, did not hesitate to exempt them from the censures of that church. In like manner, the legislature may exempt Dissenters in England from disabilities; for surely it is not a greater stretch of power to enlarge an existing toleration, than to introduce one where there was none before.

The conduct of the Legislature as to England, even confined to the very Acts in question, is still more conclusive upon this subject. For the Corporation Act, (which is supposed to be interwoven into the Union, and unalterable as the laws of the Medes and Persians,) was so altered as to be in fact repealed in the year 1718\*. So that after



the whole of an Act has been altered or repealed by the Parliament of Great Britain, it is gravely disputed that the articles of Union have made it perpetual !

If the Corporation Act *may be* repealed, the Test Act must be in the same predicament. That it has been so considered by the Legislature, is perfectly clear ; for this second supposed fundamental and essential part of the Union, has also been materially altered. In the reign of George the First, the time allowed for receiving the Sacrament was enlarged from three *lunar* to three *calendar* months, and afterwards, in 1743, from *three* months to *six*, as it stands at present.—In the statute book will be found not less than threescore Acts of Parliament, by which the times mentioned in the above laws have been extended beyond the limits supposed to have been unalterably fixed at the Union.—If these Laws are immutable, they ought not to be altered in a single letter ; but the same power which may suspend their operation *for a day*, may suspend it *for ever*. The most minute alteration or the shortest suspension is as much a breach of the Act of Union, as a total repeal would be. The annual prolongation of the limited time operates as a temporary exemption of many who would otherwise fall within the penalties of these Laws ; and all that the Dissenters now require is, that such exemption may be made general and permanent.

One argument of some moment, *in favour* of the present application, may be derived from the Act of Union. The strictness with which the internal constitution of the church is preserved, makes it very improper for any laws to subsist—which in their execution embarrass the established clergy, and make it necessary for them, in the exercise of their religious functions, to violate either their civil or ecclesiastical duties.

## C O N C L U S I O N.

*General Observations on the present Situation and future Conduct  
of the Protestant Dissenters.*

**A**FTER the Dissenters had given up their cause as hopeless, and a pause of nearly half a century had intervened, they found the temper of the times and the state of public affairs so favourable to their claim, that they determined to make one effort more to shake off their fetters. The Dissenters *in the country* had taken the lead in the reign of George the II<sup>d</sup> : those *in London* now placed themselves in the post of honour. On the 5th of January, 1787, at a general meeting of deputies\* from the Dissenting congregations in and near London, a Committee

\* The appointment of deputies from the three denominations of Protestant Dissenters in and near London, is an important æra in the history of the

Committee of twenty-one was appointed ; and having power to enlarge their numbers, the Committee afterwards associated to themselves several gentlemen resident in town and country. They corresponded with the Dissenters dispersed over the kingdom, and received from all quarters the strongest assurances of approbation and support of the object of their appointment.—The enemies of the Protestant Dissenters did not venture to object to the time (as had been always done upon every former occasion) of making this appeal to the generosity and justice of the Legislature. The state of public affairs inspired the most sanguine hopes of success. The church was in no danger from Papists or sectaries of any kind ; there was no longer any formidable pretender to the crown ; and the nation was in profound tranquillity at home and abroad.—The Monarch who now fills the throne, descended from the tried friends of religious liberty, inherited the tolerant spirit of his illustrious ancestors ; and the Protestant Dissenters in England hoped that a prince, who had graciously attended to the complaints of his more distant subjects, could not be deaf to theirs.—Moreover at this period they had a claim to the gratitude of the minister, in whose elevation they had borne a most distinguished part. They had fostered his rising genius and power, as the hope and bulwark of religious as well as civil liberty ; and they had seen with transport the government firmly established in his hands.—Every obstacle to their success being as they thought removed, they flattered themselves that all parties would cheerfully concur in the destruction of this remnant of persecution.

But the hopes of the Protestant Dissenters received a severe shock, when the motion came before the House of Commons. Their favourite minister, “ disclaiming indeed persecution in “ words, admitted the whole extent of its principle \*,” and stood foremost in the ranks against them.—The question came before the House with considerable disadvantage, from the precipitation with which the ardour of the Dissenters had hurried it on. The proportion of votes †, however, in favour of the motion was much larger than at former periods, and the event has not occasioned despair ‡.—Whether success may

the Dissenters. When the repeal of the Test Laws was agitated in 1732, the general meetings in London grew too numerous for the transacting of business ; and other reasons also operating, this institution took place. The deputies were first chosen in November, 1732, and the committee for obtaining the repeal of the Test Laws made a report to them at a general meeting at Salters Hall, on the 28th of December, in that year.—This body extends its cares to the civil rights of the Dissenters in every part of the kingdom, and its usefulness has been universally felt and acknowledged.

\* See Dr. Priestley's letter to Mr. Pitt.

† The numbers on the division were 173 to 100, tellers included.

‡ For observations on the arguments urged in the debate against the Protestant Dissenters, I refer to the periodical publication for the present month, (viz. January, 1789) intitled, *The Repository*.

attend

attend the further attempt of the Dissenters to obtain a *complete* toleration\*, must rest with the great council of the nation to determine. *At present*† the Committee (acting under the directions of the general body of Deputies) have resolved to renew the application in the present session of Parliament.

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\* No apology is necessary for presenting my readers with the following extract :

" In the very idea of religious toleration, the state is supposed to concede that as a favour, which is due as a matter of right ; but ought never to be received by the subject without an explicit reservation of the claim to established and equal liberty. It is now, however, no more than a just tribute to the noble conduct of Mr. Fox in parliament, on Wednesday March the 28th, 1787, (when the late application for the repeal of the Corporation and Test Acts was before the House) to observe, that he acquitted himself in a manner which did the highest honour to his comprehension of the great principles of universal and unqualified toleration, and to the magnanimity of his own mind.—He was opposed on this great question by the minister of the Crown and the representative of Cambridge, united in the person of Mr. Pitt ; and by the Chancellor of Oxford, who, no less faithful to his trust and his principles, declared himself against the repeal of the obnoxious statutes, but with such general acknowledgments in favour of the repeal of all penal laws, in matters of religion, as should, in their necessary consequences, have placed him on the other side of the House. It might indeed happen, that his Lordship did not read in his instructions, or did not recollect, that to declare for toleration and to defend the Test Laws, would be to establish a negative persecution, by leaving the Christian appellants under civil penalties and incapacities, utterly incompatible with the lowest practical ideas of toleration. Not to mention, that, in the investigation of these just claims on the one hand, and these unrighteous impositions on the other, it seems to be overlooked by certain vindicators of the present establishment, that the Gospel of Christ is grossly and grievously insulted and injured by the prostitution of one of its positive ordinances to a purpose, with which the Christian revelation, as such, has not the most distant connection ; which is totally foreign to the nature of its institution ; and subversive of the design of its founder ; wholly perverting it from spiritual to civil ends ; from the religious end to make men better, to a support of one party of Christians against another ; not as a symbol of friendship, but of a party and division ; not in remembrance of the death of Christ, but in memory of the grant of an office."—Dr. Disney's Life of Dr. John Jebb, p. 152, note \*.

† On Wednesday the 28th of March, 1787, Mr. Beaufoy moved in substance, that the House of Commons should immediately resolve itself into a Committee of the whole House, to consider of so much of the Corporation and Test Acts, as requires persons, before they are admitted into any office or place in corporations, or having accepted any office civil or military, or any place of trust under the Crown, to receive the Sacrament of the Lord's Supper according to the rites of the church of England. He was seconded by Sir Henry Hoghton.

So long ago as the 4th of May, 1787, at a general meeting of the deputies, it was resolved unanimously, that this application should be renewed " in the Session in 1788, or 1789 at farthest." And at a meeting of the Committee in April, 1788, it was unanimously decided to prefer the



The Protestant Dissenters, in their second effort, may continue to press upon the recollection of the Legislature, the long trial that has been made of their principles, and the uniform proofs they have given of attachment to the constitution. For more than a century they have been unjustly stigmatized as evil spirits and bad subjects ; and yet, during that time, they have been no mean instruments of preserving the liberties of their country, and have proved themselves more firmly devoted to the public good, than even those for whom they have been excluded. They *alone* can boast of the unshaken loyalty of their whole *body* to the present royal family in the worst of times, though they have to recount peculiar hardships endured from their affection for it.---Some regard and attachment must always remain for a sect, who, without lucrative or interested motives, have resolutely risked so much for others and for their country. A politician must always view with satisfaction a class of men who cherish, in conjunction with others, those useful civil persuasions, which have rendered a small community in this happy island, able not only to defend itself, but to maintain extensive distant dominions in the face of the most powerful nations of the world : and though an opposition may now and then occur from them in passing and personal concerns, which can end in nothing serious, and may often be even salutary ; yet the nation and present reigning family cannot but derive advantage from the part they have so generally taken, and which would have been more effectual had they had more power.—The late debate, however, has shewn that the Dissenters must not rely too much on their personal merits, or their sufferings ; for both these were acknowledged in the strongest terms by their opponents.

One of the arguments much pressed against them was *the danger arising from innovation*. This argument in the mouth of a statesman hardly deserves a serious answer, for it goes to deprive parliament of the powers of legislation, and to prevent all improvement in the constitution or laws of any country. If the minister had lived in days of yore, when our ancestors were Pagans and their priests Druids, and had consulted those Druids, would they not have cried out, as the bishops did lately, "*Beware of the danger of in-*

the latter period.—In pursuance of the above resolutions, the Committee has been making every necessary preparation to bring the claim of the Protestant Dissenters again under discussion in the present Session of 1789, and have spared no pains to make their communication with the Dissenters in the country as extensive and intimate as possible.—What alteration his Majesty's unfortunate indisposition may make in the proceedings of the Dissenters, cannot as yet be foreseen. The Committee act wisely in pursuing the directions of the general body to apply for a repeal of the Test Laws in the *present Session*, whatever circumstances may hereafter arise to postpone it.

" *novation ?* "

"novation?" If these maxims had prevailed at the Reformation, would not popery have been the established religion of England? If they had prevailed at the Revolution, should we not all have been slaves?—A minister need not fight the battles of a Quixote, nor ought he rashly to expose his country to danger; but it is the duty of his situation (a duty which the minister in question has courted upon other occasions) to put the public tranquillity even to some hazard in favour of a change, where the good to be expected, considerably exceeds the evil to be feared. In the present instance, contrary to the maxims of true policy, substantial advantages were overbalanced by ideal difficulties, and the fears of the bishops were thrown into the scale to make up for the want of political objections.

The experience of ancient and modern times has taught us that the prelates of the church have a commanding influence; and it is unfortunately true, that upon several occasions, and in different reigns, they have prevented the favourable dispositions of those in power from operating to the relief of Protestant Dissenters. The maxims of persecution formerly taught by the church of England, have been disavowed by most of its present teachers, *as individuals*. They would be ashamed to have it believed, that every modern archbishop is a *Laud*, and every Homily full of standard truth. But the tenets of the church itself remain the same, and would authorize the persecution of Nonconformists to the utmost extremity. Restore the power of burning heretics (which was not taken away till the end of Charles the Second's reign) and in perfect consistency with the principles of this Protestant church, its Courts may even now confer the crown of martyrdom\*. The state has retracted in open day many of the errors of its conduct towards sectaries; but the church has not in a body disavowed a single one. Thus modern prelates, as such, appear in support of tenets,

\* In the provincial synod of the province of Canterbury, William Sawtre was convicted of being a relapsed heretic, in the second year of the reign of Henry the Fourth, and the King in Parliament issued a writ to commit him to the flames. This was a roundabout way of doing the business, and therefore, in the same year, the *Prelates and Clergy* petitioned Parliament, that wherever the Diocesan or his Commissaries should convict a person of heresy, and he should refuse to abjure, or having abjured should afterwards relapse, the secular power might be called in, without the interference of Provincial Synods, Parliament, or King. Their request was granted, and their power to dye the earth with blood was exercised in the reign of Elizabeth; and under James the First, Wightman and Legate perished at the stake. Since that time, the *doctrines* of the church have not undergone the smallest alteration. The power of burning heretics was taken away in 1676, but the Spiritual Courts may still punish them "by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death."

which, as individuals, they utterly disclaim.—But why do they submit to this degradation of the episcopal character?—because of the danger of innovation. A prey to imaginary fears, they dare not give up the persecuting doctrines of their church, even though they openly disapprove them. The bishops therefore, thus interested in supporting clerical usurpations, are the last persons by whom a minister should be advised in a question concerning toleration. If the change be in itself good, it is his duty to remove their apprehensions, to assure their minds, and to pursue his measures.—The bishops opposed the application for relief of the Dissenting ministers. Twice that bill passed the House of Commons, and twice it was thrown out in the House of Lords; and at both times, *all the bishops* who were present, or sent their proxies, voted against it: but happily the minister of the day was not infected by their unmanly fears; his Majesty gave his hearty concurrence to the application; and at length the bishops, ashamed of terrors which were confined to their own bench, and convinced by the arguments used in the debates, ceased their opposition.

The inference from these observations is obvious:—Let not the Protestant Dissenters put their trust in king, minister, or prelates; but let them confide in their own exertions, the justice of their cause, and the generosity of the nation. Let them not be withheld by promises, or intimidated by threats, from prosecuting their design, or using all the helps which Providence has placed in their power. There is not an individual among them, however humble his situation, however confined his sphere of action, who may not exert himself with effect. By conversation with his neighbours, by correspondence with his friends, he may conciliate our enemies, and make the luke-warm zealous.—Besides, the time cannot be far remote, when the representatives of the people must give an account of their trust to their constituents; and that power, which the Dissenters so signally displayed at the dissolution of the last parliament, must have considerable influence at the conclusion of the present. Such a crisis in favour of the Dissenters, may not occur in the revolution of ages; and it is a duty to themselves and their posterity to take advantage of it.—They are peculiarly the guardians of *religious* liberty, and will shortly have an opportunity to shew their attachment to its friends. Those who shall have approved their regard for the rights of conscience, and voted for the repeal of the Test Laws, may go down with confidence to their constituents, who are Dissenters and friends of religious liberty; while the obstinate advocates for persecution, can have no  
O
claim



claim to *their* assistance\*. In addition to their own exertions, the enlightened and liberal spirit of the times will prove to the Protestant Dissenters their best support. Persecution now hides her "diminished head," and the rights of mankind

\* Small as are the numbers of the Protestant Dissenters, their influence is not to be despised. The following correspondence furnishes a precedent for their application to parliamentary candidates. It is extracted from the Gentleman's Magazine for 1773, page 216.

The following letter was written by the Rev. G. K. a Dissenting Minister at Liverpool, and sent by him (before a general election) to Sir William Meredith, while he was canvassing votes for that Borough.

" To Sir William Meredith.

" S I R,

" I am free of this borough, clear of all engagements to any candidate, and without attachment to any party, but that of honest men who wish well to the civil and religious liberties of mankind; I, therefore, intend giving my vote in the manner that shall have the truest tendency to preserve and extend rational liberty to the whole community. But previous to my determining any way, as I would hope you have made the civil, political, and religious liberties of mankind the subject of your studies; I take the liberty of asking you, If a bill or bills should be, during your seat in parliament, brought in, praying a full and entire toleration, free from subscriptions, for Protestants of all denominations, and repealing the Sacramental Test, which now deprives the community of the good services of many valuable members; would you, upon your honour, vote for it?—I shall take an answer in writing a favour, and if your sentiments should prove contrary on the important subject, I will return it without making any dishonourable use of it to your prejudice, and vote as to myself shall seem best."

To the above letter Sir William Meredith was pleased to return the following answer.

" S I R,

" I received the favour of your letter this morning, and am happy to retire a little while to acknowledge it. The question you are pleased to propose, is of such a nature, that, in my present state of absence from reflection, I durst not presume to answer it, had I not considered the subject before. I apprehend the only difference that subsists between Protestants is, who are the farthest from Popery? In our church many of its ceremonies are retained, in others fewer, in some none at all. Every exclusion from a common national benefit is, in its own degree, persecution, which nothing can justify but necessity, and that necessity must arise from the danger of admitting persons to a share in government, which from opinion and principle they don't assent to; but all Protestants are agreed in this one point, to support our present constitution, as a republic, under the administration of a King, whose title is sacred whilst he preserves our laws, but forfeited if he attempts to break them. Since then, we are all united in our principles of civil government, there can be no cause to deprive any Englishman of the emoluments of his country, nor our country of the benefit of any man's services, merely because he is a degree further from Popery than his neighbour. The Romish religion,

kind are asserted in every quarter of the globe.—Should king, minister, and prelates be arrayed against them, let them not shrink from the contest. It is not the interest of a party, but the cause of Christian liberty and truth, which they are labouring to serve; their claims fear not discussion; and they may cheerfully appeal to the impartial decision of public opinion, which stamps the characters of all men and of all measures, is paramount to princes and potentates, and to which kings, ministers, and prelates must ultimately bow. Defeated in their first attempt, let them not abandon their object, but repeat their application till the voice of reason shall be heard. By perseverance they must be victorious. Their Clergy, they know, were unsuccessful for a time, but at length the whole bench of bishops were converted, and silently yielded to the divine influence of truth in their favour; so certain is it, according to the persuasion of our ancestors, that, *magna est veritas, et prevalebit.*

“ligion, is not bad for society on account of its superstition, but  
 “the doctrines it maintains with regard to civil power. If, therefore,  
 “a bill is ever brought into parliament to extend the toleration of all  
 “Protestants to a free communication of every national good, should I  
 “be chosen into parliament, *upon my honour*, I will not only assent to  
 “it, but use every faculty I have in support of it; and am so far from  
 “desiring you to conceal, that I wish every man knew my thoughts on  
 “the subject, though I should have expressed them not in so rude a man-  
 “ner, had I leisure to be more correct. Were you to submit to read  
 “my sentiments of toleration, I would some time hence communicate  
 “my poor opinions, why it has not yet, and why it ought now to be  
 “carried to the length you, and I am sure I myself think it ought.

“I do not take the liberty to solicit the interest of one in your station,  
 “as you will give it on better motives than my request, but will take the  
 “first opportunity of waiting on you, whenever I can command an  
 “hour. I am, &c.

W. M.”

F I N I S.





